



# Jadu

## Terms of Service

These are the terms of service for:

- Jadu Limited
- Jadu Creative Limited
- Jadu Inc
- Jadu Software Pty Limited

# **Jadu is on a mission to become the world's most accessible digital platform.**

All our documents are presented in an open document format and have been accessibility checked.

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# Jadu Terms of Service

## 1. Introduction and Scope of Agreement

- 1.1 This agreement governs your acquisition, use and licensing of the Supported Software and Hosted Software referred to the Contract Information together with the corresponding Standard Support Service and Hosting Service. The Service/Software is operated and provided by the Jadu Group of Companies including Jadu Limited in the United Kingdom “UK” and Europe, Middle-East and Africa ‘EMEA’, Jadu Creative Limited, in the UK and EMEA and through provisions of its services in the United States “US” and Canada by Jadu Inc. and in Australia and Asia Pacific ‘APAC’ by Jadu Software Pty Limited. Jadu Creative Limited, Jadu Inc. and Jadu Software Pty Limited provide the Service/Software under license from Jadu Limited. The Main Contract confirms the relevant contracting Jadu Group company.
- 1.2 By using the Supported Software and Hosting Service, you agree to be bound by the following terms and License conditions. By doing so, you accept that you have read, understood and agree to be bound by the terms of this agreement. If you are entering into this agreement on behalf of a company, other legal entity, or any other party, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree to be bound by these terms and conditions, you may not use the Service/Software and must stop using it immediately.
- 1.3 If there is any conflict or ambiguity between the clauses of this agreement and the applicable Digital Marketplace G-Cloud Framework Agreement or Call-Off contract, to the extent necessary, the order of precedence for resolving the conflict is:
- (i) the Framework agreement
  - (ii) the completed Order Form (in relation to the Call-Off Contract)
  - (iii) the clauses of the Call-Off contract (excluding the terms of this agreement)
  - (iv) the terms of this agreement
  - (v) any other document referred to in the Call-Off contract clauses

## 2. Definitions and Interpretation

- 2.1 The definitions and rules of interpretation in this clause apply in this agreement and the schedules to it.

**Applicable Law:** applicable laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals of any governmental authority that apply to the parties or the subject matter of this agreement.

**Business Day:** a day (other than a Saturday, Sunday or any nationally recognized public holiday in the Territory referred to). Hours or minutes referred to in this agreement in relation to Business Days shall be construed as being units of time within a Business Day.

**Contract Information:** the information including the details of the supported Software and Hosted Software and any other services, Charges and payment milestones referred to in the governing contract between the parties (“**Main Contract**”) whose terms shall prevail over the terms of this agreement in the event of any conflict and any Proposal (as defined in schedule

2) in relation to Professional Services and within the documents referred to in the schedules of this agreement. If this agreement is the Main Contract, the Proposal shall also set out details in relation to any Service/Software being provided and in this context, the order of precedence in the event of any conflict shall be, the Proposal and then the terms of this agreement.

**Charges:** the charges payable for the Supported Software and any Hosted Software as set out in the Contract Information.

**Commencement Date:** the date from which we shall be making the Service/Software available to you pursuant to this agreement and as specified in the Contract Information.

**Confidential Information:** as defined in clause 12.1(a).

**Critical Fault:** a reproducible fault which substantially hinders or prevents you from using a material part of the functionality of the Supported Software in question.

**Customer Data:** all data, works and materials: uploaded to or stored on the Platform by End Users or integrated systems regarding End User data; transmitted by the Platform at your instigation; supplied by the End User to us for uploading to, transmission by, or storage on the Platform; or generated by the Platform as a result of the use of the Service/Software by the End User (but excluding analytics data relating to the use of the Platform and server log files).

**Customer Personal Data:** any Customer Data which is Personal Data that is processed by us or approved Third Party Services in relation to this agreement.

**Data Protection Requirements:** the Applicable Law of your Territory governing data protection in respect of electronic communications (in particular marketing activities), and in the UK is the Data Protection Act 2018 ( DPA 2018), and the UK General Data Protection Regulation (Regulation (EU) (2016/679) ('UK GDPR') and the Privacy and Electronic Communications (EC Directive) Regulations 2003 ('PECR') in conjunction with the UK GDPR and the DPA 2018.

**Documentation:** the documents provided by us for the Service/Software or Release in either printed text or digital or machine-readable form, including any technical documentation, program specification and operations manual.

**End User:** You, any of your organization's users, those users on behalf of whom you may have contracted, and the relevant third party end user using the Service/Software you have procured.

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

**Faults:** Critical Faults and Non-Critical Faults.

**Force Majeure Event:** an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the Internet or any public telecommunications network, cyber or hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters including natural disasters, epidemics, pandemics,

explosions, fires, floods, riots, terrorist attacks and wars).

**Hosting Service:** the hosting service of the Platform to be set out in the Contract Information including, where indicated, web performance, security or intrusion detection services) to you as part of the Hosted Software. The Hosting Service also includes the hosting by us or our Third Party Services subcontractors of the Hosted Software together with the provision of such server maintenance services, infrastructure, hardware and bandwidth as are necessary to provide such Third Party Services in relation to the Service/Software. Contract Information lists the subcontractors and data processors you approve for the delivery of the services to be delivered by us under the Main Contract. Not included, unless taken and paid for, is the optional Jadu Disaster Recovery Environment detailed in schedule 1.

**Hosted Software:** the Service/Software including all Jadu Software as a Service and any Jadu Software Products indicated as hosted in the Contract Information. Where indicated as not hosted, none of the Hosting Service shall apply and the context of agreement shall be in respect of the relevant provision of Jadu Software Product(s) and you will be responsible for all elements in relation to the hosting of Jadu Software Products including but not limited to data back-ups and ensuring that the infrastructure upon which it is hosted meets minimum server requirements or specifications.

**Inappropriate Content:** any material which is unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or the terms of this agreement.

**Indemnity Event:** as defined in clause 16.12.

**Intellectual Property Rights:** rights in patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, moral rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Jadu Partner:** a third party supplier of the Service/Software.

**Jadu Services Issues:** include Standard Support Service issues with Jadu front-end templates up to the point of completion of user acceptance testing (UAT), custom code, and Hosting Service issues concerning Jadu hosted servers and issues with server configuration affecting the operation of the Supported Software; and third party integrations or search providers.

**Jadu Software as a Service:** Service/Software which is Software as a Service (i.e. Jadu Connect, formerly CXM).

**Jadu Software Products:** Service/Software which is not Software as a Service (i.e. Jadu Enterprise products such as Jadu Central formerly XFP and CMS, Galaxies; and HUBis or Content Portal).

**License:** the terms in this agreement in relation to the licensing of all or any part of the Service/Software.

**Maximum Licensed Usage:** as defined in clause 8.1(l).

**Non-Critical Fault:** any reproducible fault in the Supported Software other than a Critical Fault.

**Personal Data:** has the meaning given to it in the Data Protection Requirements.

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

**Professional Services:** has the meaning set out in clause 10 and further terms and conditions for provision of the same in schedule 2.

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

**Service/Software:** the service and any software (which includes either Jadu Software Products or Jadu Software as a Service or a combination of both) and associated media and any Documentation we provide to you. Where reference is made to a 'product' of the Service/Software it refers to individual Service/ Software products rather than the totality of all Service/Software. The Hosting Service and Standard Support Service in relation to the Service/Software does not include any templates, themes, forms, case types, portals or other presentation layer or content items designed to operate in conjunction with or to interface with the Service/Software and are not part of the Service/Software in this regard.

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

**Standard Support Service:** the support service to be provided by us (from the Territory of England and Wales) to you as part of the Supported Software pursuant to the terms of this agreement, unless the Service/Software is being provided to you via a Jadu Partner who is providing a support service directly you.

**Standard Support Hours:** 8.00 am to 6.00 pm on Business Days in relation to the provision of the Standard Support Service.

**Supported Software:** has the meaning set out in clause 6.1.

**Supported Version:** the current live version of any Jadu Software as a Service and the most recently issued Release of the Jadu Software Products together with their previous twelve Releases.

**Territory:** England and Wales, Scotland, EMEA, U.S, Canada, Australia or APAC according to the location of the respective party's principal place of business.

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

**Third Party Services:** any part of the Hosting Service or third party integrations (as referred to in clauses 7.9 and 9) provided by any third party in accordance with the terms of this agreement.

**Updating Service:** the service to be supplied by us to you under clause 7.

**Your Materials:** your content, data, files, documents or links held within any system database

used by the Service/Software.

- 2.2 The headings in this agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 2.3 The spelling of words in this agreement do not affect its interpretation when a U.S spelling of a particular word is used and your Territory is non U.S. In such instances, the word will be taken to have the natural alternative English (UK) spelling of the word.
- 2.4 Unless the context otherwise requires:
- a) The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.
  - b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  - c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  - d) A reference to any party shall include that party's personal representatives, successors and permitted assigns.
  - e) A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
  - f) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
  - g) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - h) A reference to writing or written includes emails.
- 2.5 Words in the singular include the plural and those in the plural include the singular.
- 2.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns.
- 2.7 A reference to any Applicable Law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time.

### **3. Duration**

- 3.1 This agreement will take effect as of the start date indicated in the Main Contract.
- 3.2 Subject to termination in accordance with the provisions of this agreement and the Main Contract, this agreement shall continue for a term indicated in the Main Contract.
- 3.3 Following expiry of this agreement, any resumption of the Service/Software will require you to enter into a new agreement with us and the payment by you of the prevailing Charges. Where this agreement has been referred to as the relevant terms for an already existing or ongoing provision of Service/Software invoicing in relation to Charges shall be subject to annual increases in line with inflation and shall not exceed the greater of either the applicable annual inflationary increase set out in the Consumer Prices Index in the UK or 2%. In the case of G-Cloud Call-Off contracts, or any other UK procurement framework contract, this measure of inflationary increase will also apply unless an alternative provision is set out therein.
- 3.4 The Contract Information sets out details of the Supported Software and Hosted Software, any other services, Charges and Payment Milestones including provisions regarding perpetual licenses. Unless otherwise stated in the Contractual Information, perpetual licenses shall remain valid and unchanged without any further license charges payable conditional upon



there being unbroken renewal of the Supported Software. A fee equivalent of 50% of the then prevailing license fee shall be payable upon any renewal of the Supported Software after any such existing arrangement has lapsed.

## 4. Charges

- 4.1 In consideration of the provision of the Supported Software and any Hosted Software, you shall pay the Charges. You shall pay the Charges annually in advance within 30 days of the date of our invoice unless otherwise set out in the Contract Information.
- 4.2 Charges are non-refundable. For the avoidance of doubt there will be no refunds or credits where you have used the Supported Software, any Hosted Software or any Third Party Services including where this has been for only part of the term referred to in clause 3.1 or where there has been no use, or partial use of the Supported Software, any Hosted Software, or any Third Party Services or where you have obtained an addition or reduction in the Service/Software and we do not accept any liability whatsoever for any loss of applications, content, features or capacity caused as a result of a reduction of the Service/Software you have obtained.
- 4.3 In the event of any fault arising which is not covered as part of the Standard Support Service, we shall, at your request, provide you with a proposal or quotation for the work required to be carried out in connection with such fault. This might, for example, include any data recovery work following loss or damage to data caused by matters or circumstances beyond our reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack).
- 4.4 Save where the Contract Information sets out the complete arrangements for the payment of our expenses occasioned with the provision of our services pursuant to this agreement, you shall reimburse any of our reasonable expenses including travel, hotel costs, subsistence and any associated expenses where such expenses are incurred wholly and exclusively for the purpose of providing on-site support in respect of the provision of the Supported Software, Hosted Software and/or Professional Services, (and where we have indicated in the Contract Information the use of Third Party Services, where the cost of services provided by such third parties and required by us for the performance of the aforementioned services) provided any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 4.5 If the Contract Information sets out the complete arrangements for late payment, then those provisions shall apply instead of the following: if you fail to make any payment due to us under this agreement by the due date for payment, then, without limiting our remedies under clause 17.1 (a), you shall pay a late payment charge equal to the lesser of either 3% of the full outstanding sum per month or the maximum amount allowable by the Applicable Law of your Territory on the overdue amount from the due date until actual payment of the overdue amount (or if the Applicable Law of your Territory provides otherwise, for such period of time that may be permitted).
- 4.6 All amounts payable under this agreement shall be exclusive of the relevant Applicable Laws in relation to local sales taxes applicable to your Territory which shall be paid at the rate and in the manner for the time being prescribed by law.
- 4.7 Subject to clause 4.8, all amounts due under this agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 4.8 If there is a dispute between the parties as to the amount invoiced, you shall pay the

undisputed amount. Jadu shall not suspend the supply of the Service/Software unless the Jadu is entitled to terminate the agreement for a failure to pay undisputed sums in accordance with clause 17.1(a). Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.

## **5. Grant and Scope of License**

- 5.1 Jadu and/or its licensors own all right and title to the intellectual property, designs and concepts in all elements of the Service/Software and we warrant that we have the right to license use of the Service/Software to you. We do not sell the Service/Software to you and accordingly, ownership of the Service/Software shall not pass to you.
- 5.2 In consideration of the payment of the Charges, we hereby grant to you a non-exclusive, non-transferable license to use the Service/Software for the duration of the term set out in clause 3 subject to the terms of this License.
- 5.3 You may:
- a) use the Service/Software for your normal business purposes only;
  - b) use any Releases, and any Releases or new features that augment or enhance the Service/Software shall be (and your use of the same shall be) subject to the terms of this agreement as amended from time to time; and
  - c) use any Documentation in support of the use permitted under this clause 5 and make such copies of the Documentation as are reasonably necessary for its lawful use.
- 5.4 We shall be entitled to monitor your usage of the Service/Software and, if we request you to do so, you shall provide us with the access necessary to determine such usage. If our monitoring reveals that you have at any time exceeded the Maximum Licensed Usage, we shall be entitled to recalculate the Charges for the Service/Software in accordance with currently prevailing Charges with reference to your actual usage both on an on-going basis and in respect of any period of previous additional usage and you shall pay the shortfall within 30 days of our written notification of the same to you.
- 5.5 Neither party shall transfer their rights and obligations under this License to another person, entity or organization without the other party's written consent, not to be unreasonably withheld or delayed.

## **6. Supported Software**

- 6.1 The Supported Software is:
- a) the Service/Software;
  - b) any Release which is acquired by you during the term set out in clause 3 and which accordingly becomes part of the Service/Software under the License; and
  - c) any other service or software which we agree in writing should be Supported Software for the purposes of this agreement;
- Provided that we shall not be required to support such Service/Software:
- d) on a Platform solution stack other than as indicated and defined in the Contract Information;

- e) in respect of any version other than a Supported Version; or
- f) in any Environment other than one of the Environments specified in the Contract Information.

6.2 For the avoidance of doubt, the Supported Software excludes:

- a) any service or software not supplied to you by us; and
- b) any Bespoke Software (as defined in schedule 2) or service developed by us for you (unless specifically described in the Contract Information or otherwise agreed in writing by us).

6.3 In relation to Releases:

- a) as part of the Updating Service, we shall (in the case of Jadu Software as a Service) apply Releases from time to time at our discretion and save for immediately deployed emergency Releases required to urgently address security or performance / availability issues, we shall provide you with no less than 24 hours' notice of such Release;
- b) as part of the Updating Service, we shall (in the case of Jadu Software Products) make available to you and either supply you with a Release for you to apply, or (if you have purchased a fully platform managed Hosting Service) we shall apply Releases from time to time at our discretion and save for immediately deployed emergency Releases required to urgently address security or performance / availability issues, we shall provide you with no less than 24 hours' notice of such Release; and
- c) save for Updating Services for Jadu Software as a Service, for which the following shall not apply, unless you have obtained from us specific support for developed bespoke front end templates, you shall be responsible for the costs of rebuilding any Jadu Software Product forms, templates and other presentation layer items following the installation of any such Release. Any assistance we provide with installation or building of presentation layer items shall be in accordance with our Professional Services.

## **7. Support Service, Updating Service and Hosting Service**

7.1 Where we supply and you take and pay for Supported Software and Hosted Software these shall comprise of the following services:

- a) the Standard Support Service (in relation to Supported Software);
- b) the Updating Service (in relation to Supported Software); and
- c) the Hosting Service (in relation to Hosted Software).

7.2 In relation to the Standard Support Service:

- a) the Standard Support Service shall be provided during the Standard Support Hours and:
- b) shall comprise online support via Support Portal to the number of named users at your organization (according your selected support level) in respect of technical issues or errors that may be Faults and Jadu Services Issues in the Supported Software and; for the avoidance of doubt, the support level number of named users shall be the maximum amount of users in relation to your organization for all Supported Software and any additional named users required shall be subject to additional Charges;
- c) shall comprise telephone support in respect of technical issues or errors that may be Faults and Jadu Services Issues in the Supported Software that you have logged via Support Portal;

- d) shall comprise diagnosis of the aforementioned technical issue or errors and, where possible, correction of Faults in the Service/Software and resolution of Jadu Services Issues;
- e) where a Non-Critical Fault is to be corrected in a forthcoming Release, then for a reasonable period (to be determined by Jadu exercising its discretion reasonably) before the issue of such Release we may decline to provide assistance in respect of that Non-Critical Fault;
- f) Our support staff shall be entitled to close any ticket which does not relate to such technical issues or errors or where they are able to direct you to the solution on Support Portal or in any Documentation or where appropriate in terms of Service/Software knowledge issues, recommend and offer to you Professional Services training;
- g) you shall ensure that no Personal Data including Customer Personal Data is entered into the Support Portal and as such these will be regarded as Your Materials; and
- h) we shall use our reasonable endeavours to ensure that the Standard Support Service meets the service levels set out in schedule 1.

### 7.3 In relation to the Updating Service:

- a) we shall issue Releases as and when required and in whatever form (including by way of a local fix or patch of the Service/Software or a temporary solution) as we determine in our absolute discretion;
- b) all dates supplied by us for the issue of Releases or the provision of any other service shall be treated as approximate only.
- c) we shall provide access to all revisions to the Documentation which are necessary in order to reflect any Releases, this will include details of new features or functionality which are typically provided on the basis that they can be deployed or switched on by you at your convenience; and
- d) In the case of Jadu Software Products, application of a Release is by arrangement with you, pursuant to the Updating Service. To ensure that we do not introduce either faults generally as a result of the particular set up of your LIVE Environment or specifically as Faults to your LIVE Environment, we recommend that you adopt a UAT Environment to mirror the architecture and content of your LIVE Environment to allow both parties to test changes to the Hosting Service before applying them to the LIVE Environment;
  - (i) where you have adopted a UAT Environment, we shall apply any changes pursuant to the Updating Service to the Hosting Service on your UAT Environment, inform you in writing and require you to perform a user acceptance test of the changes applied to your UAT Environment within an agreed reasonable time. We shall not apply any changes to your LIVE Environment and this aspect of the Hosting Service until we have received written confirmation from you that this aspect of the Hosting Service operates as required on the UAT Environment. We shall not be liable for Faults in this aspect of the Hosting Service identified on your LIVE Environment that cannot be replicated on your UAT Environment;
  - (ii) where you have not adopted a UAT Environment and we have been unable to test such changes as referred to above, you acknowledge and agree that the Standard Support Service shall not be available for any aspect of this Hosting Service and we shall not be liable for any loss or damage arising from faults that we introduce where we have been unable to test such changes as set out in clause 7.3(d)(i).

### 7.4 We may, on prior notice to you, make changes to the Service/Software, provided such

changes do not have a material adverse effect on your business operations.

- 7.5 In the case of Jadu Software Products, we shall be entitled for support purposes to maintain our own copy of any or all of your Environments, which shall be accessible only by us, our agents and subcontractors.
- 7.6 We shall have no obligation to provide the Standard Support Service in respect of any faults in Supported Software arising from:
- a) misuse, incorrect use of or damage to the Supported Software from whatever cause (other than any act or omission by us), including failure or fluctuation of electrical power;
  - b) any changes to the Supported Software database(s) that have not been made by us or our agents or subcontractors;
  - c) use of the Supported Software with unsupported browsers/devices. For the avoidance of doubt a list of currently supported browsers/devices is available via the Support Portal and is updated from time to time;
  - d) use of the Supported Software in combination with any equipment or software not provided by us or not designated by us for use with any Release forming part of the Supported Software, or any fault in any such equipment or software;
  - e) any breach of your obligations under this agreement howsoever arising or having the Supported Software maintained by a third party;
  - f) In the case of Jadu Software Products, any Faults in the Hosting Service identified on your LIVE Environment that cannot be replicated on your UAT Environment; or
  - g) user error.
- 7.7 For the avoidance of doubt, the Service/Software does not include any Professional Services (such as the development of bespoke software or the building or alteration of forms or templates). Any such services shall be provided in accordance with clause 10.
- 7.8 In the case of Jadu Software Products, if you report issues in a supported Release older than the most recently issued Release, we shall provide you with technical advice and assistance in upgrading to the latest Release. If the relevant issue is not resolved following such upgrade we shall schedule a fix in a subsequent Release at our discretion (with reference to the severity of the reported issue and the impact upon your business or organization).
- 7.9 In relation to the Hosting Service:
- a) The Hosting Service shall include the hosting by us or our Third Party Services subcontractors set out in the Contract Information of the Hosted Software together with the provision of such server maintenance services, infrastructure, hardware and bandwidth as are necessary to provide such hosting. Without prejudice to your other obligations under this clause 7.9:
    - (i) you must ensure that you have in place the necessary contractual safeguards to ensure the transfer of relevant Customer Personal Data to a provider of Third Party Services for the Hosting Service is lawful;
    - (ii) you must ensure that you have in place the necessary contractual safeguards to ensure the use of relevant Customer Personal Data by a provider of Third Party Services Hosting Service is lawful;
    - (iii) you shall have the opportunity to consent to transfers of Customer Data to any Third Party

Services Hosting Service operator and we must ensure that such transfers shall not take place without your consent;

- (iv) you hereby consent to the transfer of the Customer Data to the relevant Third Party Services Hosting Service subcontractors set out in the Contract Information (or agreed elsewhere in writing between the parties). This shall be for any such category of data that may reasonably be regarded by Jadu as required for the effective purpose of such Hosting Service or as otherwise stipulated in the Contract Information;
  - (v) you acknowledge that from time to time we may substitute, replace or add a Third Party Services Hosting Service provider and in such event, clause 13.4 shall apply;
  - (vi) you warrant to us that the transfer of Customer Data by us to a provider of Third Party Services in accordance with this clause 7.9 will not infringe any person's legal or contractual rights and will not put us in breach of any Applicable Law; and
  - (vii) Save to the extent that the parties expressly agree otherwise in writing and subject to clause 15.3, we give no warranties or representations in respect of any Third Party Services Hosting Service.
- b) Data storage for the Hosting Service is fully managed, with 24 hour 7 days a week monitoring. We will respond to any outage, technical issue or service interruption as soon as is reasonably practicable. We may where necessary choose to restore any severely affected system from the latest backup, however you acknowledge that unless you have taken and paid for a Disaster Recovery (DR) Environment we can utilize, this process will overwrite the Customer Data stored on the Platform prior to the restoration point and we will bring the Customer Data back into the Hosting Service as soon as reasonably practicable at no additional cost to you save where any loss or damage to data is caused by matters or circumstances beyond our reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack) in which case, any work in this regard shall involve Professional Services in accordance with clause 10.
  - c) We shall provide virus-checking of the Hosted Software from commencement of the Hosting Service. We shall also provide firewall protection.
  - d) We shall provide such server monitoring, log file rotation, application of server operating system updates and patches and user account management services as Jadureasonably considers necessary for the provision of a reliable and consistent Hosting Service.
  - e) We refer you to clause 6.3(a) and may suspend for the purpose of repair, maintenance or improvement, part or all of the Hosting Service upon at least 24 hours' notice to you (save for cases of emergency as referred to in clause 6.3(a)) and shall use our reasonable endeavours to restore the Hosting Service as soon as is reasonably practicable following any such suspension.
  - f) You shall follow reasonable instructions provided by us in respect of the Hosting Service which we consider necessary for safety or to maintain or improve the quality of the Hosting Service. This may include our use of alternative Third Party Services subcontractors pursuant to this clause 7.9.
  - g) Unless we agree otherwise in writing, your use of the Hosted Software shall be (i) limited to the bandwidth set out in the Contract Information in relation to the specific environment for Jadu Software Products. Any use over such limit shall be subject to additional bandwidth charges, in accordance with our rates advertised or notified to you from time to time. (ii) 250 GB of storage for accounts of Jadu Software Products and Jadu Software as a Service. Sandbox Environments are limited to 10GB of storage. Additional storage required can be purchased on a monthly

basis.

- h) You shall keep secure any usernames and passwords related to the Hosting Service and shall notify us immediately of any known or suspected unauthorized use of the Hosted Software or breach of security, including loss, theft or unauthorized disclosure of one of your passwords or other security information.
- i) You shall observe all reasonable security and operational procedures we may from time to time prescribe and you shall not use the Hosting Service in any way which could be detrimental to our other clients and customers.
- j) We shall be entitled to update the technical specification of the Hosting Service for operational reasons. In order to allow us to continually upgrade our hosting facilities, we may from time to time relocate your servers within Third Party Services. data centers, make changes to the provision of the Hosting Service, URLs and Internet protocol (IP) addresses and establish new procedures for the use of the Hosting Service. We will give you advance notice of any such change and endeavour to minimize the effect of any such changes on your use of the Hosting Service.

## **8. Obligations, Restrictions and Requirements**

8.1 Except as expressly set out in the terms of this agreement you undertake:

- a) not to copy the Service/Software except where such copying is incidental to normal use of the Service/Software or where it is necessary for the purpose of back-up or operational security;
- b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Service/Software (in the case of Jadu Software Products you may insert your own custom scripts in those directories of our installation structure as may be indicated by the Documentation or as otherwise agreed in writing between the parties);
- c) not to reproduce, duplicate, copy, sell, resell, reuse or exploit any portion of the Service/Software user interface, source code or visual design elements and/or concepts without our express written permission or use of the Service/Software, or access to the Service/Software contrary to the terms of this agreement;
- d) not to make alterations to, or modifications of, the whole or any part of the Service/Software nor permit the Service/Software or any part of it to be combined with, or become incorporated in, any other programs unless expressly agreed in writing between the parties;
- e) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Service/Software nor attempt to do any such things except to the extent that (In the United States by virtue of section 102(b) US Copyright Act 1976, or in the UK by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving interoperability of the Service/Software with another software program, and provided that:
  - (i) you have first made a written request to us for such information as is necessary to achieve interoperability with independently created computer programs and such information has not been supplied within a reasonable period of time the information obtained by you during such activities;
  - (ii) any such information obtained by you is used only for the purpose of achieving interoperability of the Service/Software with another software program;
  - (iii) any such information obtained by you is not disclosed or communicated without Jadu's prior

written consent to any third party to whom it is not necessary (as determined in Jadu's sole discretion) to disclose or communicate it and accordingly, will be subject to such confidentiality terms as Jadu so reasonably determines;

- (iv) any such information obtained by you may be subject to such terms of payment as Jadu so reasonably determines; and
- (v) any such information obtained by you is not used to create any service or software which is substantially similar to the Service/Software;
- f) not to examine the source code incorporated within the Service/Software other than for the purposes of creating compatible or inter-operating software applications and not to copy or adapt such source code;
- g) not to allow or permit any unauthorized person to access or use the Service/Software except where we have provided our prior written consent, or to examine the source code incorporated within the Service/Software (and such persons shall access the source code only to the extent provided for in clause 8.1(f) above);
- h) to supervise and control the use of the Service/Software and ensure that the Service/Software is used by your organization's staff, employees and authorized representatives in accordance with the terms of this agreement;
- i) to include our copyright notice on all entire and partial copies of the Service/Software in any form and not to remove any such notices (including any copyright notices in any source code files);
- j) not to remove the "Powered by Jadu" or "Designed and Powered by Jadu" text and hyperlink that may be included in any products or solutions developed and supplied to you by us, our agents or authorized partners;
- k) not to provide, or otherwise make available, Service/Software in any form, in whole or in part (including, but not limited to, Documentation, program listings, source code listings) to any person other than your organization's staff, employees and authorized representatives without prior written consent from us;
- l) not to allow: (i) more users to concurrently access Jadu Software as a Service, Connect product than the maximum number of licensed users set out as the Maximum Licensed Usage in the Contract Information or as otherwise agreed in writing between the parties. The maximum number of licensed users meaning those who have granular role permissions as set up through the Service/Software and may create and amend new services, workflow rules and notifications and who can view, create or amend End User records, (ii) more usage than the permitted license tier (as stated in the Contract Information or as otherwise agreed in writing between the parties) in relation to Jadu Software as a Service, Connect product, Jadu Software Products, including Jadu Central and Jadu Content Portal product, or (iii) usage of Live Environment Galaxies in excess of the usage banding stated in the Contractual Information or as otherwise agreed in writing between the parties;
- m) not to misuse the Service/Software by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful;
- n) not upload, publish, post, link to or transmit any Inappropriate Content using the Service/Software;
- o) not to attempt to gain unauthorized access or make any alteration to the Platform, Service/Software, the server from which the Service/Software is provided or any other server,



computer or database connected to the Service/Software. By breaching this provision, you may commit a criminal offence (in the United States under the computer fraud law (18 U.S.C. § 1030 contained in the Comprehensive Crime Control Act of 1984 and in the UK, under the Computer Misuse Act 1990). We shall report any such breach to the relevant law enforcement authorities and will cooperate with those authorities by disclosing your identity to them if we are required to do so. In the event of such a breach, your right to use the Service/Software will cease; and

- p) not to conduct or request that any other person conduct any load testing or penetration testing on the Platform, Hosting Service or Service/Software without our prior written consent not to be unreasonably withheld or delayed.
- 8.2 You accept that we are not responsible for the content posted or otherwise appearing on the Service/Software and that End Users are exposed to the content of the Service/Software at their own risk.
- 8.3 we may, but have no obligation to remove content that we determine in our sole discretion is Inappropriate Content.
- 8.4 Both parties shall take appropriate technical and organizational measures against unauthorized or unlawful processing of Personal Data or its accidental loss, destruction or damage. This may include pseudonymizing and encrypting Personal Data. Where requested by you or as otherwise authorized under this agreement, the technical processing and transmission of the Service/Software in relation to the Hosting Service including your content, may be transferred unencrypted and involve:
- a) transmissions over various networks and in this regard, we are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and you acknowledge that the Service/Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - b) changes to conform and adapt to technical requirements of connecting networks or mobile devices;
  - c) temporary return of encrypted data to an unencrypted format for the effective operation of the intrusion detection system forming part of the Hosting Services; and
  - d) in the event of a support or security issue with the Hosting Services access to data to perform required investigation and resolution of any such issue.
- 8.5 All interactions with the Hosted Software, whether via the administration user interfaces that we provide or via Jadu's own API's for systems integrations, data will be transmitted over an HTTPS (TLS) connection.
- 8.6 Without limitation to clauses 8.4, 8.5, all Jadu Software Product Central form data captured is stored at rest using AES encryption. All Customer Personal Data within Jadu Software as a Service Connect product, such as person record data, is stored at rest using AES encryption. Case data fields are configurable within your Environment, and such fields requiring encryption, such as fields that include sensitive or Customer Personal Data, should be assessed as to whether they should be set up to be encrypted during initial configuration of that case data field. Jadu Software as a Service Connect data held for fields set as encrypted are stored at rest using AES encryption. Each Environment utilizes a unique encryption key when data is to be written to, or retrieved from, the relevant application database.
- 8.7 You are exclusively responsible for the selection, use of and results obtained from any other

programs, materials or services used in conjunction with the Service/Software.

- 8.8 You shall provide us and our staff and all other persons duly authorized by us with full, safe and uninterrupted access (including remote access with sufficient network connectivity speed) to your premises, systems, facilities and the Service/Software as may reasonably be required for the purpose of performing our service obligations under this agreement, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where our service obligations are to be performed at any of your premises, you shall provide adequate working space and office facilities (including telephone) for use by our staff and take reasonable care to ensure their health and safety.
- 8.9 You shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by your organization's staff, employees and authorized representatives.
- 8.10 You shall:
- a) cooperate with us in the performance of our service obligations under this agreement and provide any assistance or information as may reasonably be required by us, including in relation to the diagnosis of any Faults;
  - b) report Faults promptly to us.

## **9. Integrations with Third Party Services**

- 9.1 The Jadu Software as a Service, Connect product integrates with those Third Party Services identified as released within the Jadu Integrations Hub (available at [www.jadu.net/integrationshub](http://www.jadu.net/integrationshub)) as at the Commencement Date. We may make available for integration with the Service/Software additional or replacement Third Party Services at any time through a later Release and as indicated in the Jadu Integrations Hub.
- 9.2 Save where you have taken and paid for Service/ Software in relation to such Third Party Services, we may remove, suspend or limit any Third Party Services integration at any time at our sole discretion if you have not complied with the License or otherwise breached the terms of this agreement.
- 9.3 The Service/Software may contain features designed to interoperate with Third Party Services. To use such features, you may be required to obtain access to such Third Party Services from the Third Party Services providers. If the provider of any Third Party Services ceases to make the Third Party Services available for interoperation with the corresponding Service/Software features on reasonable commercial terms (as determined by us exercising our own discretion) we may cease providing such Service/Software features without entitling you to any refund, credit, or other compensation.
- 9.4 Save for the provision of any Hosting Service or any such other services specified in the Contract Information (or elsewhere in writing between the parties), the supply of Third Party Services such as those provided through integrations with our Service/Software shall be under a separate contract or arrangement between you and the relevant third party and we do not contract to supply such Third Party Services and we are not a party to any contract for, or otherwise responsible in respect of the provision of any such Third Party Services. Fees may be payable by you to the relevant third party in respect of the use of such Third Party Services or any connectors required to use such Third Party Services or applications.
- 9.5 You acknowledges that:
- a) the integration of Third Party Services may entail the transfer of Customer Data from the

Service/ Software to the relevant Third Party Services; and

- b) we have no control over, or responsibility in respect of any disclosure, modification, deletion or other use of Customer Data resulting from any integration with any Third Party Services.
- 9.6 Without prejudice to your other obligations under this clause 9, you must ensure that you have in place the necessary contractual safeguards to ensure that both:
- a) the transfer of relevant Customer Personal Data to a provider of Third Party Services application is lawful; and
  - b) the use of relevant Customer Personal Data by a provider of Third Party Services application is lawful.
- 9.7 Your act of enabling an integration through the Jadu Integrations Hub ( or other integration capability or mechanism provided in Service/Software shall constitute your consent to transfers of Customer Data to any Third Party Services application operator and this shall be for any such category of data that may reasonably be regarded by Jadu as required for the effective purpose of such integration or as otherwise stipulated in the Contract Information.
- 9.8 The use of some features of the Service/Software may depend upon you enabling and agreeing to integrations between the Service/Software and Third Party Services.
- 9.9 You warrant to us that the transfer of Customer Data by us to a provider of Third Party Services in accordance with this clause 9 will not infringe any person's legal or contractual rights and will not put us in breach of any Applicable Law.
- 9.10 Unless provided as a Release, additional charges may be payable by you to us in respect of a Third Party Services integration.
- 9.11 Save to the extent that the parties expressly agree otherwise in writing:
- a) we give no warranties or representations in respect of any Third Party Services in accordance with this clause 9; and
  - b) we shall not be liable to you in respect of any loss or damage that may be caused by any Third Party Services integrations or any provider of Third Party Services integrations and you acknowledge that it is your responsibility to ensure that you have understood and accepted any such Third Party Services terms and conditions.
- 9.12 Any use our or Third Party Services APIs ( application programming interface) in relation to the End User's use of the Service/Software is subject to the following terms:
- a) If Jadu reasonably determines that there is abuse or excessive usage by way of frequent requests to the Service/Software via our APIs, we may upon giving prior written notice to you suspend your access to such APIs.
  - b) We reserve the right at any time to modify or discontinue, temporarily or permanently, your access to the APIs (or any part thereof) with or without notice where your use of the API is found to be in breach of this agreement, or is determined by us to be having a detrimental effect upon our ability to deliver the Service/Software.
  - c) Where you use our API to produce your own portal into the Service/Software, you must notify all End Users using such portal that their user information may be used to authenticate them if they access the Service/Software and you must obtain their consent before registering them as users.

## 10. Professional Services

- 10.1 Professional Services include, but are not limited to, training, software development, software testing, software implementation, design, project and programme management, installation or building of presentation layer items (including but not limited to forms and portals) and consultancy. Any such services shall be delivered (by us or by our subcontractors) at our Professional Services rates and in accordance with the terms of this agreement including the supplementary Professional Services terms and conditions set out in schedule 2.

## 11. Intellectual Property Rights

- 11.1 Jadu and/or its licensors own all Intellectual Property Rights in all elements of the Service/Software, know-how or other works created or supplied by us (whether alone or jointly) in the course of providing the Service/Software and we warrant that we have the right to license use of the Service/Software to you.
- 11.2 You acknowledge that all Intellectual Property Rights in all elements of the Service/Software, know-how or other works created or supplied by us (whether alone or jointly) in the course of providing the Service/Software belong to us or our licensors, that rights in the Service/Software are licensed (not sold) to you, and that you have no rights in, or to, the Service/Software other than the right to use them in accordance with the terms of this agreement.

## 12. Confidentiality and Publicity

- 12.1 Except to the extent set out in this clause 12.1, or as required or provided by Applicable Law we shall each:
- a) treat the other party's confidential information (including without limitation confidential information embodied in the Service/Software and confidential information in relation to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential) as confidential; and
  - b) (subject to clause 12.2) not without the owner's prior written consent disclose the other party's Confidential Information to any other person other than those of our employees who need to know the same for purposes relating to this agreement (who for the avoidance of doubt shall be made aware of the confidential nature of the Confidential Information and of their duty of confidence to the owner).
- 12.2 Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.3 We may refer to you as being our client in our customer reference lists and sales presentations and shall be entitled to refer to you in any advertising or press release (in all cases subject to the terms of clause 12.1 above). Where we request you provide a reference for us, you shall not unreasonably refuse or delay your response to such request.
- 12.4 Save for making details of the agreement available if required by Applicable Law in a contracts register, you shall not without our written consent issue any written notice, press release or other publicity which in any way identifies us as a provider of services to you.

### 13. Customer Data

- 13.1 You hereby grant to us a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of our obligations and the exercise of our rights under this agreement. You also grants to us the right to sub-license these rights to our Third Party Services providers, subject to any express restrictions elsewhere in this agreement.
- 13.2 You warrant to us that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any Applicable Law.
- 13.3 Details of data storage for the Hosting Service are set out at clause 7.9 (b) of this agreement.
- 13.4 Each party shall comply with the Data Protection Requirements with respect to the processing of the Customer Personal Data.
- 13.5 You warrant to us that you have the legal right to disclose all Personal Data that you do in fact disclose to us under or in connection with this agreement.
- 13.6 You shall only supply to us, and we shall only process, in each case under or in relation to this agreement:
- a) the Personal Data of data subjects falling within the categories specified in the Contract Information or such other categories as may be agreed by the parties in writing; and
  - b) Personal Data of the types specified in the Contract Information or such other types as may be agreed by the parties in writing.
- 13.7 We shall only process the Customer Personal Data for the purposes specified in table in the Contract Information. In the event that no detail is set out in the Contract Information. We are permitted to process Customer Personal Data as we see fit (acting reasonably and in good faith) in accordance with the provision of the Service/Software and in accordance with our obligations under this agreement.
- 13.8 We shall only process the Customer Personal Data during the duration of this agreement and for not more than 30 days or such other time period as agreed between the parties following the termination of the agreement, subject to the other provisions of this clause 13.
- 13.9 We shall only process the Customer Personal Data on your documented instructions (including with regard to transfers of the Customer Personal Data to any place outside your Territory, or if your Territory is in the UK, this shall also include the European Economic Area "EEA" ), as set out in this agreement or as otherwise agreed in writing between the parties.
- 13.10 You hereby authorize us to make the following transfers of Customer Personal Data:
- a) we may transfer the Customer Personal Data internally to our own employees, offices and facilities in the Jadu Group of companies, provided such transfers must be protected by appropriate safeguards including reasonable appropriate technical and organizational measures against unauthorized or unlawful processing of Customer Personal Data or its accidental loss, destruction or damage;
  - b) we may transfer the Customer Personal Data to our Third Party Services subcontractors identified as providing the relevant services to us as set out in the Contract Information, provided such transfers must be protected by appropriate safeguards including reasonable appropriate technical and organizational measures against unauthorized or unlawful processing

of Customer Personal Data or its accidental loss, destruction or damage; and

- c) we or our Third Party Services subcontractors identified in the Contract Information may process the Customer Personal Data in a country, territory or sector only to the extent required to ensure effective service (including support) provision provided always that we or our Third Party Services subcontractors ensure the adequate level of protection for Personal Data in accordance with either the Data Protection Requirements or an internationally recognized treaty agreement between such country, territory or sector and your Territory.

13.11 Notwithstanding any other provision of this agreement, we may process the Customer Personal Data if (and to the extent that) we are required to do so by Applicable Law. In such a case, we shall inform you of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

13.12 We shall ensure that persons authorized to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

13.13 Both parties shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in the Contract Information.

13.14 We must not engage any third party to process the Customer Personal Data without your prior written consent. Accordingly, we shall inform you at least 30 days in advance of any intended changes concerning the addition or replacement of any Third Party Services Hosting Service provider. If you object to any such changes before their implementation, then you may terminate this agreement on 7 days' written notice to us, provided such notice must be given within the period of 7 days following the date that we informed you of the intended changes. We shall ensure that each Third Party Services Hosting Service provider is subject to similar legal obligations as those imposed on us by this clause 13.

13.15 As at the Commencement Date, we are hereby authorized by you to engage as sub-processors with respect to Customer Personal Data, the relevant Third Party Services subcontractors identified in the Contract Information.

13.16 We shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organizational measures to assist you through the provision of Professional Services (unless the parties otherwise agree in writing) with the fulfilment of your obligation to respond to requests exercising a data subject's rights under the Data Protection Requirements.

13.17 We shall assist you through the provision of Professional Services (unless the parties otherwise agree in writing) in ensuring compliance with the obligations relating to the security of processing of Personal Data; the notification of Personal Data breaches to the supervisory authority; the communication of Personal Data breaches to the data subject; data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Requirements. Where any such Personal Data breach is caused by matters or circumstances beyond our reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack) we may be able to assist you with any remedial work you require to be undertaken through the provision of Professional Services. We shall not be liable for any such loss or damage caused by any third party except those Third Party Services contracted by us to perform the Hosting Service.

13.18 We must notify you of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 36 hours after we become aware of the breach.

You will alert us without undue delay as soon as you become aware of any such breach.

- 13.19 We shall make available to you information necessary to demonstrate our compliance with our obligations under this clause 13. We shall assist you through the provision of Professional Services (unless the parties otherwise agree in writing) with any work to be performed by us at your request pursuant to this clause 13.19, provided no such charges shall be levied with respect to the completion by us (at your reasonable request, not more than once per calendar year).
- 13.20 We shall delete or return all of the Customer Personal Data to you after the provision of services relating to the processing, and shall delete existing copies save to the extent that Applicable Law requires storage of the relevant Personal Data.
- 13.21 We refer you to clauses 9.5 and 9.6 in relation to any Customer Personal Data integrated with or through Third Party Services applications and you acknowledge full responsibility in relation to the lawful transfer, use, handling, storage, deletion or return of the same.
- 13.22 We shall allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you in respect of the compliance of our processing of Customer Personal Data with the Data Protection Requirements and this clause 13. We shall assist you through the provision of Professional Services (unless the parties otherwise agree in writing) with any work performed by us at your request pursuant to this clause 13.22, provided that no such charges shall be levied where the request to perform the work arises out of any breach by us of this agreement or any security breach affecting our Platform.
- 13.23 If any changes or prospective changes to the Data Protection Requirements result or will result in one or both parties not complying with the Data Protection Requirements in relation to the processing of Personal Data carried out under this agreement, then the parties shall use their best endeavours promptly to agree such variations to this agreement as may be necessary to remedy such non-compliance.
- 13.24 You agree that, for our research and development purposes and to allow us to continually improve our quality and user experience, we may automatically collect and store the following information from you each time you or your authorized users access the Service/Software interfaces:
- a) technical information as stored within a combination of the Service/Software or supporting log files, including the Internet Protocol (IP) address of your computer, your login identifier, browser type and version, time zone setting, operating system and platform date/time access; and
  - b) other information about your use of the Service/Software as stored within our managed Google Analytics account, including the modules of the Service/Software that you have used and how you have used them, the date and time, page response times, length of visits to certain pages, page interaction information (such as scrolling, clicks, and mouse-overs) and methods used to browse away from certain pages.
- 13.25 You agree that we may use the information collected pursuant to clause 13.24 in order to contact you with useful and relevant advice or information relating to the Service/Software.

## **14. Warranties**

- 14.1 We warrant to you that:
- a) we have the legal right and authority to enter into this agreement and to perform our obligations under this agreement; and

- b) we have or have access to all necessary know-how, expertise and experience to perform our obligations under this agreement.
- 14.2 For 30 days from the Commencement Date, we warrant to you that the Service/Software will, when properly used perform substantially in accordance with the functions described in the Documentation.
- 14.3 We warrant to you that:
- a) the Platform will incorporate security features reflecting the requirements of good industry practice; and
  - b) the application of Releases by us will not introduce any defects, errors or bugs in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Service/Software but excluding any defect, error or bug caused by or arising as a result of:
    - (i) any act or omission of you or any person authorized by you to use the Service/Software;
    - (ii) any use of the Service/Software contrary to the Documentation, whether by you or by any person authorized by you;
    - (iii) a failure by you to perform or observe any of your obligations in this agreement;
    - (iv) the introduction of faults as set out in accordance with clause 7.3 (d) (i) and (ii);
    - (v) an incompatibility between the Service/Software and any other system, network, application, program, hardware or software not specified by us as compatible; including but not limited to interoperability with the Service/Software or if a defect or fault in the Service/Software arises only when the Service/Software is used with unsupported browsers. For the avoidance of doubt, a list of currently supported browsers is available via the Support Portal and is updated from time to time; and
    - (vi) matters or circumstances beyond our reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack).
- 14.4 Your sole remedy for breach of warranties in clauses 14.2 and 14.3 is to require us to repair or replace (at Jadu's option) the defective item so that it complies with the warranty in that clause which has been breached within a reasonable time at no charge to you provided that any such breach of warranty is notified to us in writing during the applicable warranty period and for the avoidance of doubt, Jadu's right to provide that remedy shall not be affected if you fail to provide notice in accordance with the terms of this clause 14.4. You shall provide all information as may be reasonably necessary to assist us in resolving the defective item including without limitation, sufficient information to enable Jadu to recreate the defect.
- 14.5 If Jadu is unable or unwilling to remedy such breach notified to us pursuant to clause 14.4 within a reasonable time after receipt of such notice, Jadu may terminate this agreement by notice in writing to you and we shall reimburse any Charges already paid by you upon your compliance with clause 17.10 subject to the limit set out in clause 16.9.
- 14.6 We warrant to you that the Service/Software, when used by you in accordance with this agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any Applicable Law.
- 14.7 If Jadu reasonably determines, or any third party alleges that the use of the Service/Software by you in accordance with this agreement infringes any person's Intellectual Property Rights, we may at our own cost and expense:



- a) modify the Service/Software in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - b) procure for you the right to use the Service/Software in accordance with this agreement.
- 14.8 You warrant to us that you have the legal right and authority to enter into this agreement and to perform its obligations under this agreement.
- 14.9 You warrant that you shall have in place public liability insurance to cover any injury that could be suffered by our personnel at your premises.
- 14.10 Save where any other terms are required to give effect to the parties entering into this agreement because they have entered into a separate Framework or Call-Off contract (for which the terms of this agreement are expressly designed to operate), both parties warranties and representations in respect of the subject matter of this agreement are expressly set out in this agreement. To the maximum extent permitted by Applicable Law, no other warranties, conditions, representations or other terms, express or implied concerning the subject matter of this agreement will be implied into, or incorporated in this agreement whether by statute, common law or otherwise.

## **15. Acknowledgements and Warranty Limitations**

- 15.1 You acknowledge that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this agreement, we give no warranty or representation that the Service/Software will be wholly free from defects, errors and bugs, or that the use of the same will be uninterrupted.
- 15.2 You acknowledge that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this agreement, we give no warranty or representation that the Service/Software will be entirely secure.
- 15.3 You acknowledge that the Hosting Service is designed to be compatible only with that software and those systems specified by us in writing as compatible; and we do not warrant or represent that the Service/Software will be compatible with any other software or systems.
- 15.4 You acknowledge that we will not provide any legal, financial, accountancy or taxation advice under this agreement or in relation to the provision of any of our services pursuant to this agreement; and, except to the extent expressly provided otherwise in this agreement, we do not warrant or represent that the Service/Software or the use of the Service/Software by you will not give rise to any legal liability on your part or on the part of any other person.

## **16. Limitation of Liability and Indemnities**

- 16.1 You hereby agree to indemnify, defend and hold harmless us and our directors, officers, employees, agents, representatives from and against all demands, claims, actions, causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties, legal fees and expenses that may be made against us (including by the licensor of the Service/Software) as a direct or indirect result of, or in any way related to:
- a) any breach of the License, including for the avoidance of doubt, your undertakings set out in clause 8.1; any contravention or breach by you (or any of your organization's users) of the License or where indicated the other terms of this agreement may result in the termination (or at our sole discretion, suspension) of the provision of the Supported Software or Hosting Service;

and/or

- b) any use by you of the Service/Software; except to the extent that any such damage, loss, liability or expense arises from Jadu's breach of this agreement or its wilful misconduct.

16.2 Save for our obligations in relation to Customer Personal Data as set in clause 13, you acknowledge that we are not responsible for any of Your Materials and you shall indemnify us and keep us indemnified against any claims, demands, actions or losses that we may suffer, sustain or incur arising in connection with Your Materials.

16.3 Nothing in this agreement will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under Applicable Law; or
- d) exclude any liabilities that may not be excluded under Applicable Law

16.4 The limitations and exclusions of liability set out in this clause 16 and elsewhere in this agreement:

- a) are subject to clause 16.3; and
- b) govern all liabilities arising under this agreement or relating to the subject matter of this agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this agreement.

16.5 Neither party shall have any liability in respect of any losses, damages, costs or expenses arising out of a Force Majeure Event.

16.6 Neither party shall have liability in respect of any:

- (i) indirect or consequential losses, damages, costs or expenses;
- (ii) loss of actual profits or anticipated profits;
- (iii) loss of contracts;
- (iv) loss of use of money;
- (v) loss of anticipated savings;
- (vi) loss of revenue;
- (vii) loss of goodwill;
- (viii) loss of reputation;
- (ix) ex gratia payments;
- (x) loss of business;
- (xi) loss of operational time;
- (xii) loss of opportunity; or

(xiii) any punitive damages

whether or not such losses were reasonably foreseeable or the party in default or its agents had been advised of the possibility of the other incurring such losses, for the avoidance of doubt, clauses 16.6(ii) to 16.6 (xiii) apply whether such losses are direct, indirect, consequential or otherwise.

- 16.7 We shall not be liable to you for any loss or corruption of any data, database or software; provided this clause 16.7 shall not protect us unless we have fully complied with our obligations under clause 13.4.
- 16.8 We shall not be liable to you for any loss (including in relation to any security breaches) arising in connection with any defects or malicious code present in any Third Party Libraries.
- 16.9 Save for liability arising in relation to an Indemnity Event, the aggregate liability of us to you under this agreement shall not exceed 125% of the total amount paid and payable by you to us under this agreement.
- 16.10 You acknowledge that we use Third Party Services to provide the Hosting Service of the Platform and the only representation as to service levels and uptime are in accordance with our service levels set out in schedule 1. Without prejudice to any other provision of this agreement, our total liability to you in respect of such services levels and uptime shall in no circumstances exceed a sum equivalent to the service credits set out in schedule 1.
- 16.11 We accept no liability whatsoever for any costs incurred by you in rebuilding content/data for use within the Service/Software where indicated in clause 6.3(c).
- 16.12 We shall indemnify you and shall keep you indemnified against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by you by reason of:
- a) any Personal Data breach by Jadu affecting Customer Personal Data up to the following amounts:
    - (i) If your Territory is within the UK or within EMEA: the total aggregate liability shall not exceed £1,000,000 ( UK Sterling).
    - (ii) If your Territory is within the US or Canada: the total aggregate liability shall not exceed \$1,000,000 (US dollars).
    - (iii) If your Territory is within Australia or within APAC: the total aggregate liability shall not exceed \$1,000,000 (Australian dollars).
  - b) breach of our warranty at clause 14.6.
- 16.13 You must:
- a) upon becoming aware of an actual or potential Indemnity Event, notify us;
  - b) provide to us all such assistance as may be reasonably requested by us in relation to the Indemnity Event;
  - c) allow us the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Indemnity Event; and
  - d) not admit liability to any third party in connection with the Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Indemnity Event without our prior

written consent.

16.14 Our obligation to indemnify you under clause 16.12 shall not apply unless you comply with the requirements of clause 16.13.

## 17. Termination

17.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies but subject to clause 17.2 and unless the parties have otherwise agreed in writing, either party may at any time terminate this agreement and/or any of the Supported Software and Hosted Software with immediate effect by giving written notice to the other party if:

- a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) which is irremediable or (if such breach is remediable) the other party fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning in:
  - (i) section 123 of the Insolvency Act 1986 if the relevant party's Territory is in the UK; or
  - (ii) section 95A Corporations Act 2001 (Cth) but only where the statutory presumption of insolvency in subsection 588E(3) and subsection 588E(4) are unable to be relied upon or are able to be rebutted if the relevant party's Territory is Australia; or
  - (iii) the Uniform Commercial Code 1952 (as revised), or is insolvent within the meaning of the Bankruptcy Code if the relevant party's Territory is in the US; or
  - (iv) relevant Applicable Law if the relevant party's Territory is none of the above;
- e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up, dissolution or liquidation of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- h) the holder of a qualifying floating charge, lien or security over the assets of that other party has

become entitled to appoint or has appointed an administrative receiver;

- i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on, or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject to that has an effect equivalent or similar to any of the events mentioned in clause 17.1(d) to clause 17.1(j) (inclusive); or
- l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

17.2 Clauses 17.1(d) to 17.1(k) shall not apply to any statutory demand, winding-up petition or similar process which:

- a) the relevant party can reasonably demonstrate is frivolous, vexatious or an abuse of process; or
- b) is withdrawn, discharged, set aside, stayed or dismissed within 14 days of its issue or commencement.

17.3 Without limiting our other rights or remedies and unless the parties have otherwise agreed in writing, we may terminate this agreement (or at our option suspend any Supported Software and Hosted Software under it) with immediate effect by giving written notice to you if you fail to pay any amount due (pursuant to clause 17.1(a)); or if you or any agent acting on your behalf interferes with or repeatedly fails to implement the advice given in respect of the Supported Software and Hosted Software inhibiting or preventing us from performing our service obligations under this agreement or if your staff are abusive or behave unreasonably to our staff.

17.4 Without limiting our other rights or remedies, we may suspend the provision of any Supported Software and Hosted Software under this agreement if you become subject to any of the events listed in clause 17.1(d) to clause 17.1(k), or we reasonably believe that you are about to become subject to any of them or if you fail to inform us of updates to your contact details to the extent we are unable to communicate with you.

17.5 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

17.6 The accrued rights, remedies, obligations and liabilities of each of us at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry. Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement (including but without limitation clauses 1, 2, 11, 12, 13, 14, 16, 17, 18, 20.5 and 20.11) shall remain in full force and effect.

17.7 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

17.8 On termination of this agreement for any reason, your right to use the Supported Software and Hosted Software shall cease automatically along with our provision of Standard Support Service and any Hosting Service.

17.9 On termination of this agreement for any reason, you shall immediately pay any outstanding unpaid invoices due to us.

17.10 Upon termination or expiry for any reason:

- a) all rights granted to you under the License pursuant to the terms of this agreement shall cease;
- b) you must cease all activities authorized by the License; and
- c) you must immediately destroy or return to us (at our option) all copies of the Service/Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## 18. Non-Solicitation

18.1 You shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any of our employees who have been engaged in the provision or management of the Supported Software or Hosting Service or otherwise in connection with this agreement to leave our employment.

## 19. Dispute Resolution

19.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

19.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

19.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under Applicable Law.

## 20. General

20.1 Save where specifically agreed in writing between the parties, neither of us shall be liable to the other as a result of any delay or failure to perform our obligations under this agreement as a result of a Force Majeure Event. In the event that either party is delayed or prevented from performing their obligations under this agreement, that party shall:

- a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the effective date and extent of such delay or prevention, the cause thereof and its estimated duration;
- b) use reasonable endeavours to mitigate the effects of such delay or prevention of performance of its obligations under this agreement; and
- c) resume performance of its obligations under this agreement as soon as reasonably possible after the removal of the cause of the delay or prevention.

20.2 Any notice to be served in respect of this agreement must be in writing and must be served by

hand or registered post or recorded delivery and in the case of a company must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Such service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 Business Days after posting.

- 20.3 Our waiver of any right under this agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by us in exercising any right or remedy under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 20.4 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 20.5 If a court or any other competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected. If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 20.6 Nothing in this agreement is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between us, nor constitute either of us the agent of another party for any purpose. Neither of us shall have authority to act as agent for, or to bind the other in any way.
- 20.7 If your Territory is in the UK, you will indemnify us against any liability we incur under the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Agency Workers Regulations 2010 or the Conduct of Employment Agencies and Employment Business Regulations 2003 as a consequence of the provision of the Supported Software or Hosted Software.
- 20.8 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the other party's consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Jadu may assign its rights under this agreement
- 20.9 Except as set out in these terms and conditions, no variation of this agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties.
- 20.10 If your Territory is in the UK, this agreement will not create nor will it be construed as creating any right under the Contracts (Rights of Third Parties) Act 1999, (or the Contracts (Rights of Third Parties) (Scotland) Act 2017) which is enforceable by any person who is not a party to this agreement. If your Territory is not within the UK, no person who is not a party to this agreement shall acquire any rights under it or be entitled to benefit from any of its terms even if that person has relied on any such terms or has indicated to any party to this agreement its assent to any such terms.
- 20.11 This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with:
- a) English law, if your Territory is England or Wales, Northern Ireland or within EMEA; or
  - b) Scots law, if your Territory is Scotland; or

c) the laws of the State of Kansas if your Territory is US or Canada; or

d) Australian Capital Territory law, if your Territory is Australia or within APAC;

and the parties irrevocably submit to the exclusive jurisdiction of the courts of:

e) England and Wales in the case of 20.11(a); or

f) Scotland in the case of 20.11(b); or

g) the State and Federal courts of Kansas in the case of 20.11(c); or

h) the Australian Capital Territory in the case of 20.11(d).



**The following additional clauses apply if You are a UK Territory local government body (“Council”):**

## **21. Prevention of Bribery**

21.1 the Council shall be entitled to cancel the agreement and to recover from Jadu the amount of any loss resulting from such cancellation, if Jadu or its employees or agents (with or without its knowledge):

- (a) does anything improper to influence the Council to award to Jadu any contract;and/or
- (b) commits an offence under the Bribery Act 2010 in connection with the agreement or under Section 117 of the Local Government Act 1972.

21.2 Jadu shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the agreement or for showing or refraining from showing favour or disfavour to any person in relation to the agreement.

21.3 Jadu shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the directors, officers, employees, agents, consultants and contractors of Jadu and/or of any subcontractor of Jadu engaged in the performance of Jadu’s obligations under the agreement (“Staff”); and Jadu (including its shareholders, members and directors) in connection with the agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

21.4 If Jadu or any Staff engage in conduct prohibited by clause 21.2 or commits fraud in relation to the agreement or any other contract with the Council, the Council may:

- (a) terminate the agreement and recover from Jadu the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Service/Software and any additional expenditure incurred by the Council throughout the remainder of the agreement; or
- (b) recover in full from Jadu any other loss sustained by the Council in consequence of any breach of this clause.

## **22. Health and Safety and Equality Provisions**

22.1 Jadu shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the agreement. The Council shall promptly notify Jadu of any health and safety hazards which may exist or arise at the Council’s premises and which may affect Jadu in the performance of its obligations under the agreement.

22.2 Jadu shall:

- (a) comply with the reasonable requirements of the Council’s security arrangements provided that they have been communicated in advance, and in writing to Jadu;
- (b) in the performance of the agreement, Jadu must comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other relevant Applicable Laws pertaining to health and safety;
- (c) comply with all the Council’s health and safety measures provided that they have been

communicated in advance, and in writing to Jadu;

- (d) notify the Council immediately in the event of any incident occurring in the performance of its obligations under the agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
- (e) perform its obligations under the agreement in accordance with all Applicable Law pertaining to equality and the Council's equality and diversity policy from time to time as provided that it has been shared with Jadu in advance; and
- (f) take all reasonable steps to secure the observance of clause 22.2 (d) by all Staff.

## **23. Modern Slavery**

23.1 Jadu will work with the Council to identify and mitigate the risk of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain.

23.2 Jadu will, within 90 days of the Commencement Date, (where required to do so) provide its Anti Slavery and Human Trafficking Statement and (where required to do so) an Anti Slavery and Human Trafficking Report identifying the main risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain, highlighting the main products and countries involved and the steps to be taken to mitigate the risks in the short, medium and long term.

23.3 Jadu will review and if required, update its Anti Slavery and Human Trafficking Report annually for the duration of the agreement. More regular updates will be provided when risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain are assessed as imminent either by the Council or Jadu.

23.4 Jadu agrees that the Council may request assess to its Anti Slavery and Human Trafficking Report and the annual progress to prevent and mitigate risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain.

23.5 Jadu agrees to work with the Council, if required, to further develop the implementation of its Anti Slavery and Human Trafficking Report by jointly drafting a Modern Slavery in the Supply Chain Action Plan.

23.6 Jadu agrees to appoint a nominated person to liaise with the Council to further develop the implementation of its Anti Slavery and Human Trafficking Report and the Modern Slavery in the Supply Chain Action Plan.

## **24. Freedom of Information and Environmental Regulations**

24.1 The Council is subject to The Freedom of Information Act 2000, or the The Freedom of Information (Scotland) Act 2000 ("FOIA") (as applicable) and the Environmental Information Regulations 2004 and Jadu shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- (b) transfer to the Council all Requests for Information in accordance with the meaning set

out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); relating to the agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

- (c) provide the Council with a copy of all Information (which has the meaning given under section 84 of the FOIA), belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Business Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

24.2 Jadu acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning Jadu and services supplied by Jadu including the Service/Software. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give Jadu advance notice and the Council will consider any request by Jadu in relation to the exercise of any exemptions under the FOIA, but the parties acknowledge that the Council has absolute discretion to apply or not to apply any such exemptions.

# Schedule 1

## Details of Standard Support Service, service levels and service credits

### Standard Support Service for Supported Software:

Priority of Fault	First Response (i) within	Feedback frequency	Target for Platform or Release update, temporary fix or workaround and where applicable, available for you to test (ii)
<p><b>Priority 1 - Customers WITH a DR Environment (iv)</b> A Critical Fault which is a complete unavailability of Supported Software and Hosting Service for a period of 5 minutes or more</p>	<p>30 minutes (iii) for Jadu Software Products.</p> <p>15 minutes (iii) for Jadu Software as a Service Connect product</p>	Every hour (iii)	1 hour (iii) (or sooner for temporary fix see narrative below) to provide a fix or to switch to DR site (subject to terms and conditions of DR service) for Jadu Software Products and within 8 hours (iii) for Jadu Software as a Service Connect product issues,
<p><b>Priority 1 - Customers WITHOUT a DR Environment</b> A Critical Fault which is a complete unavailability of Supported Software and Hosting Service for a period of 5 minutes or more</p>	<p>30 minutes (iii) for Jadu Software Products.</p> <p>15 minutes (iii) for Jadu Software as a Service Connect product</p>	Every hour (iii)	12 hours (iii) (or sooner for temporary fix see narrative below) for Jadu Software Products and within 8 hours (iii) for Jadu Software as a Service Connect product issues,
<p><b>Priority 2 - Integration service issues</b> A Critical Fault with Supported Software that relates to a supported Integration adapter or that causes issues with third party integrations (vi) whereby it is impacting live service consumption for multiple End Users such that the service is rendered completely unavailable or degraded to the point of it being unusable for a period of 60 minutes or more.</p>	Three hours (iii)	Every hour (iii)	Within 8 working hours of the issue being raised (in accordance with narrative below (vi), or within 16 working hours where a Hotfix solution is required.
<p><b>Priority 2 - Jadu Control Centre issues</b> A Critical Fault with the Service/Software, for example where the Jadu Central Jadu Software Product Control Center or core functionality within the Jadu Software as a Service Connect product Control Center that is affecting multiple End Users within your organisation managing content, forms, cases etc.</p>	Three hours (iii)	<p>Every week for Jadu Software Product issues</p> <p>Every day (iii) for Jadu Services Issues and Jadu Software as a Service Connect product issues</p>	<p>Jadu Software Product issues - 4 weeks.</p> <p>For Jadu Services Issues, 1 week.</p> <p>Jadu Software as a Service Connect product issues, 2 Days (iii)</p>
<p><b>Priority 3</b> A Non-Critical Fault with Supported Software (including issues with functionality) that inhibits, but does not prevent, operation of any element of the Service/Software. An Example in relation to Jadu Software as a Service being integration errors</p>	<p>Three hours (iii) for Jadu Software Products.</p> <p>60 minutes (iii) for Jadu Software as a Service Connect product</p>	<p>Every 4 weeks for Jadu Software Product issues;</p> <p>Every week For Jadu Services Issues and every day (iii) for Jadu Software as a Service Connect product issues.</p>	<p>Jadu Software Product issues - 12 weeks.</p> <p>For Jadu Services Issues, 4 weeks.</p> <p>Jadu Software as a Service Connect product issues, 4 Days (iii)</p>
<p><b>Priority 4</b> Non-Critical Faults that are minor functional issues, that do not prevent processing of tasks, content related problems and queries, or</p>	Three hours (iii) for Jadu Software Products.	Every 4 weeks	<p>Service/Software issues - 16 weeks.</p> <p>For Jadu Services Issues, 8 weeks.</p>

customer service comment /complaint

60 minutes (iii) for  
Jadu Software as a  
Service Connect  
product

*(i) We will respond to all tickets within the response times indicated in the table above during the Standard Support Hours. For the purposes of this agreement the date and time at which a Fault is raised is considered to be the date and time at which it is entered into the Support Portal. Any Fault raised by your staff or agents via telephone call will be logged on their behalf within the Support Portal. Where Faults are raised by telephone call then the First Response target will be deemed to have been met by the interaction within said call. For the purposes of the audit trail and any subsequent reports the times will be taken from the date and time the Fault was logged in the Support Portal.*

*(ii) Due to the varying types of support tickets and the dependency on both your and our subcontractor's interaction, we do not offer a resolution target. Response and resolution times depend on the nature and severity of the Fault reported; these response and resolution times represent worst case scenarios for the most complex Faults rather than being targets for all Faults and we would expect to be well within these times for most Faults. A workaround for Non-Critical Fault may involve a patch or fix which addresses the problem; in such cases a resolution may involve a Release.*

*(iii) Business Day, hour(s) or other specified unit of time.*

*(iv) Jadu DR Service as set out below:*

*Where taken and paid for, the **Jadu Disaster Recovery Environment ('DR Environment')** provision operates as follows:*

*Where taken and paid for, the **Jadu Disaster Recovery Environment ('DR Environment')** provision operates as follows:*

*The DR Environment for your Jadu Software Products is available during a LIVE Environment disaster event subject to DNS changes initiated and managed by you unless the necessary arrangements have previously been made to enable Jadu to initiate DNS changes.*

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

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

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

*Annual testing of failover to the DR Environment can be included as an additional Professional Service. Customers are required to assist in such tests which will be scheduled in accordance with customer business requirements.*

For all Jadu Software as a Service Connect product accounts you are responsible for dealing with the following issues:

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

**Service/Software Uptime SLA - Service Credits for Jadu Software as a Service Connect Product:**

Service Hours	Measurement Period	Uptime	Service Credit (v)
24 x 7	Monthly	Between 99.9% and 99.00%	3% of monthly charge for the applicable Service/Software product.
24 x 7	Monthly	Between 98.99% and 97.50%	6% of monthly charge for the applicable Service/Software product.
24 x 7	Monthly	Below 97.49%	10% of monthly charge for the applicable Service/Software product.

(v) Service Credits shall be exclusive the financial remedy for failure to meet the KPIs in the table above and will take the form of a credit note to be offset against future Charges. Service Credits shall only be paid as a refund if the agreement is terminated or expires and the Supported Service is not renewed. The monthly measurement of determining Service Credits shall be based on calendar months and accordingly shall commence from customers first full calendar month using the Service/Software. Service credits are only payable on the applicable Uptime banding and not applied cumulatively. Scheduled Downtime and emergency maintenance (as set out in clause 6.3 of the agreement) is excluded from the calculation of Uptime.

The KPIs in the table above only applies to LIVE Environments of Jadu Software as a Service Connect product and does not include instances of any other Service/ Software. All other Service/Software is measured in accordance with the KPI table below.

**“Uptime”**

Uptime is defined as the percentage availability of the Hosting Service over the current calendar month. Uptime is monitored for different Territories and regions independently (e.g. UK is measured distinctly from USA), whereby we are measuring a positive API response from a Jadu designated account within the relevant operating environment at one minute intervals, using an independent third party monitoring service.

**"Scheduled Downtime"**

Scheduled Downtime is planned routine maintenance for the deployment of new releases of the Service/Software or regular maintenance activities and such scheduled maintenance for each Territory environment shall be logged by Jadu through the Jadu Software as a Service Connect product service availability page which is located at: <https://www.jadu.net/statuspage>

**Service/Software Uptime SLA - Service Credits for Jadu Software Products:**

Service Hours	Measurement Period	Uptime	Service Credit (v)
24 x 7	Annually	Between 99.9% and 99.00%	3% of annual charge for the applicable Service/Software product.
24 x 7	Annually	Between 98.99% and 97.50%	6% of annual charge for the applicable Service/Software product.
24 x 7	Annually	Below 97.49%	10% of annual charge for the applicable Service/Software product.

(v) Service Credits shall be the exclusive financial remedy for failure to meet the KPIs in the table above and will take the form of a credit note to be offset against future Charges. Service Credits shall only be paid as a refund if the agreement is terminated or expires and the Supported Service is not renewed.

The KPIs in the table above do not extend to Third Party Services including but not limited to integration or third party systems. Service credits are only payable on the applicable Uptime banding and not applied cumulatively. Scheduled Downtime and emergency

maintenance (as set out in clause 6.3 of the agreement) is excluded from the calculation of Uptime.

**(vi) Integrations issues**

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

The following are five broad categories of integration issues that could cause Third Party Services (integrations) to be unavailable to the Service/Software or that might cause it to perform in a degraded manner that significantly impairs usability:

Type of issue	Owner and course of action	Target for Platform or Release update, temporary fix or workaround and where applicable, available for you to test (ii)
<p>1) Connectivity failure between the Service/Software and the Third Party Service (integration), possibly as a result of:</p> <ul style="list-style-type: none"> <li>• Third party service outage</li> <li>• Network connectivity failure</li> <li>• Invalid security certificate on the third party service</li> </ul>	<p>Resolution will be dependent upon the Third Party Services provider.</p>	<p>N/A</p>
<p>2) Changes have been made to the capabilities and/or configuration of the Third Party Services (integration) by the Third Party Service provider without prior consultation, resulting in this having not been reflected in the Service/Software.</p>	<p>Issues would require changes to the configuration of the Service/Software. In each of those cases the Third Party Service provider would be expected to provide notice of the required changes in good time for Jadu to analyse these, schedule the work and arrange with customers for the work to be implemented on Test and Live environments. The changes would usually be undertaken free of charge but fall outside of these SLA's.</p>	<p>N/A</p>
<p>3) Changes have been made to the configuration of the third party service by the customer that have not been reflected in the Service/Software configuration.</p>	<p>Issues would require changes to the configuration of the Service/Software to be made by the customer. In the unlikely event that Jadu are required to make a change to the Service/Software, the changes would fall outside the Standard Support Service and would involve Professional Services with timescales for implementation of the changes to be agreed.</p>	<p>N/A</p>
<p>4) Authentication configuration (e.g. certificates, passwords etc.) held within the Service/Software or the Hosting Service and used to connect to the Third Party Service have changed, expired, been deleted or disabled but not reflected within the</p>	<p>Issues would typically be resolved by Standard Support Service.</p>	<p>Within 8 hours (iii) of new authentication configuration being supplied.</p>

Jadu configuration.		
5) Changes have been made to the Service/Software that break or degrade the integration with the Third Party Services (integration).	Releases are tested prior to being implemented on LIVE Environments. If, despite prior testing, a Service/Software change causes an integration to be broken or significantly degraded, such issues would typically be resolved by rolling back the change that had been made to the Service/Software. If the issue is raised after a significant period of live operation with the changed Service/Software and the change cannot be rolled back, then a Hotfix may be made available to the Service/Software to rectify the change that had been made.	Where able to Rollback: typically undertaken within 8 hours <b>(iii)</b> of the issue being raised.  Where a Hotfix can be made available: typically undertaken within 16 hours <b>(iii)</b> of the issue being raised.

**“Hotfix”**

A temporary solution rather than a Release developed to correct a bug or fault in the Service/Software as quickly as possible to remedy the underlying issue.



# Schedule 2

## Professional Services Terms and Conditions

In relation to the provision of Professional Services under this agreement the parties agree:

Any Professional Services work described in the Contract Information or set out in any detailed proposal for the provision of Professional Services “Proposal” to be provided under this agreement is subject to our Professional Services Terms and Conditions (“terms and conditions”) set out below and your acceptance of the quotation in the Proposal constitutes your acceptance of the terms and conditions set out below. For the avoidance of doubt, any reference to ‘agreement’ in these terms and conditions relate to the Jadu Terms of Service and these terms and conditions supplement the terms set out in the agreement, but in the event of any conflict, the terms of the agreement shall prevail.

Work will be undertaken as described in the Proposal. Any work not described will not form part of the Proposal. If, for whatever reason, work not described in a Proposal is required at a later date, this will form a change to requirements and will require a Proposal for further development to be written, quoted and for a purchase order for this Proposal to be provided. Furthermore, any changes to any existing proposal (“Change”) that are out of scope and impact our delivery or have a financial cost, will be subject to change control and will need to be signed by a duly authorized representative of each party pursuant to the Change Control Procedure outlined in Annex 1.

### 1. Interpretation

- 1.1 In these terms and conditions, the following additional definitions apply and supplement the terms defined in the agreement :

**Charges:** in the context of these terms and conditions, the charges payable by you for the supply of the Services in accordance with clause 5.

**Deliverables:** the Services deliverables set out in the Proposal (including in any annexed documents) or otherwise agreed in writing between us.

**Project Milestone:** in respect of any project-based delivery of Services, an agreed milestone of the project.

**Proposal:** the order for Services set out in the Contract Information and/or outlined in the quotation proposal and subject to the terms and conditions.

**Services:** Professional Services as defined in the agreement, including the Deliverables, supplied by us to you as set out in the Proposal, including in any annexed documents.

**Specification:** the description or specification (if any) of the Services set out in or attached to the Proposal or otherwise agreed in writing between us.

**Sprint:** each two week period (or such other time period as set out in the Proposal or otherwise agreed in writing between us) during which a set of features and functionalities shall be developed as part of software development Services.

**Story:** a description of each feature or functionality to be incorporated into a particular

Sprint (as set out in the Proposal or otherwise agreed in writing between us) as part of software development Services.

## **2. Basis of these Professional Services**

- 2.1 These terms and conditions apply to the Proposal for the supply of Services by us to you.
- 2.2 In the event of any inconsistency, the terms set out in the Proposal shall prevail over these terms and conditions. Your terms and conditions and any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing are expressly excluded.
- 2.3 The Proposal and these terms and conditions together constitute and form part of the agreement (part of the overarching Jadu Terms of Service) between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by us or on our behalf which is not set out in the agreement, Proposal or these terms and conditions.
- 2.4 Any drawings, descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our websites or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services offered by us. They shall not form part of the Proposal or have any contractual force.
- 2.5 Any quotation given by us can be revoked at any time prior to unless it forms part of the agreement.

## **3. Supply of Services**

- 3.1 Subject to clause 8.3, we shall supply the Services to you in accordance with the Specification (if any) in all material respects.
- 3.2 We shall use our reasonable endeavours to meet any performance dates specified in the Proposal (or otherwise agreed between us in writing) but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 At our sole discretion, we may permit you to purchase a number of days of Services in advance (Prepaid Days) which you may then use in lieu of payment subject to these terms and conditions. Any Prepaid Days must be purchased as part of a Proposal and will expire at 6pm on the Business Day immediately prior to the anniversary of the commencement date of the Proposal (or if no commencement date is specified, the date of the Proposal). You shall not be entitled to use any expired Prepaid Days to purchase Services and we shall not be required to refund the purchase costs of such expired Prepaid Days.
- 3.4 Prepaid Days are purchased for specific categories of Service, each of which may have a different day rate. You shall be permitted to use specific categories of Prepaid Days only to purchase Services of the corresponding category.
- 3.5 You acknowledge and agree that the delivery of Services is subject always to the availability of our resources and we do not guarantee the availability of any particular calendar days for the delivery of Services to you unless confirmed in a Proposal. In particular, we do not guarantee that you may use Prepaid Days during the 45 days prior to their expiry. You acknowledge and agree that you shall be responsible for ordering Services from us in sufficient time to ensure your Prepaid Days do not expire.
- 3.6 We warrant to you that the Services will be provided using reasonable care and skill and in accordance with good industry standards using appropriately qualified, trained and

experienced staff

- 3.7 The agreement with us may provide additional warranties in respect of Supported Software and Hosted Software provided pursuant to the Services (including in relation to correcting errors in such software) but any such provisions will be additional to and without prejudice to the terms of any Proposal.
- 3.8 You may, by giving written notice to us at any time during the term of the agreement, request a change to the Services and/or any relevant Specification. Within 10 Business Days of receipt of such notice, we shall, at our standard rates then in force, prepare for you a written estimate of any increase or decrease in the Charges and of any effect that the requested change would have on the provision of Services including timescales in relation to any project schedule or Project Milestones. Within 7 Business Days of your receipt of our written estimate, you shall inform us in writing of whether or not you wish the requested change to be made in which case a revised Proposal shall be agreed and the changes implemented on the date or dates specified in the revised Proposal.
- 3.9 Both of us shall be expected to work within the timescales agreed in the agreement or in a subsequent project schedule. If at any time during the term of the agreement, you wish to cancel or delay any provision of Services for which a schedule has been agreed, you shall provide notice in writing to us. Where provision of Services are cancelled or delayed by anyone other than us, you will pay to us the relevant Chargeable sum as set out in the table below. The parties agree that this reflects a genuine pre-estimate of loss that would be suffered on the occurrence of such cancellation in relation to our allocation of our resources for the provision of the Services:

Notice of cancellation/delay	Chargeable sum
Immediate	100% of the value of remaining provision of Services for 1 week then 50% up to 4 weeks after cancellation/delay date.
Up to 1 week	50% of the value of remaining provision of Services up to 3 weeks after cancellation/delay date.
Up to 2 weeks	50% of the value of remaining provision of Services up to 2 weeks after cancellation/delay date.
Up to 3 weeks	50% of the value of remaining provision of Services up to 1 week after cancellation/delay date.

For the avoidance of doubt, you will have to pay for all provision of Services undertaken by us up to cancellation/delay date on or before the times specified in this clause.

- 3.10 We shall provide you with copies of the documentation (if any) identified in the Proposal. You may make only such further copies of the documentation as are reasonably necessary for use within your business and you shall not disclose the documents or any part of them to any third party without our written consent.
- 3.11 We warrant any work for 30 days from the system acceptance of the Deliverables. This is restricted to technically related “bugs” or errors that occur as a result of incorrect programming or technical flaws in the scripts that are used in the web site. This warranty will be deemed invalid if the scripts or html code are altered, deleted or modified in any way by any party other than us. Any work arising from alteration, deletion or any modification by any other party will be charged at the standard day rates.
- 3.12 Subject always to clause 7.1 below, any forms, portals, website templates or other presentation layer items are considered your property following the system acceptance period.

- 3.13 Unless the parties agree otherwise in writing, the user acceptance testing arrangement applicable to Deliverables will be as set out in clause 6.7 below.
- 3.14 The parties acknowledge that they afford equal opportunity to individuals whether in their employment, service, or through the provision of their respective services, programs and activities in accordance with Applicable Laws. This includes effective communication and access to electronic and information communication technology resources for individuals with disabilities. We shall: (i) deliver Services in compliance with the Web Content Accessibility Guidelines 2.1 to the standard set out in the Proposal; (ii) following the system acceptance period, upon your request, provide you with a proposal for Services for ongoing accessibility compliance requirements; and (iii) within the system acceptance period, promptly respond to accessibility issues you raise in relation to the Services.

## **4. Your obligations**

- 4.1 You shall:
- a) ensure that the terms of the Proposal (and any other information you provide relevant to the Proposal) are complete and accurate;
  - b) cooperate with us in all matters relating to the Services;
  - c) provide us, our employees, agents, consultants and subcontractors, with access to your premises, office accommodation and other facilities as reasonably required by us; and
  - d) provide us with such information and materials (including but not limited to Specifications and acceptance test criteria) as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects.
- 4.2 If our performance of any of our obligations under the Proposal is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (Customer Default):
- a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations;
  - b) we shall not be liable for any costs or losses sustained or incurred by us arising directly or indirectly from your failure or delay to perform any of your obligations as set out in this clause 4.2; and
  - c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.
- 4.3 You acknowledge and agree that any estimates provided by us rely on information provided by you and we shall be entitled to vary our estimates where such information is inaccurate or incomplete.

## **5. Charges and payment**

- 5.1 In addition to the provisions set in the agreement concerning Charges, The Charges for the Services shall (unless indicated otherwise on the Proposal) be on a time and materials basis:
- a) the Charges shall be calculated in accordance with our standard daily fee rates in force from time to time, as set out in the Proposal;

- b) our standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00am to 6.00pm worked on Business Days unless we agree otherwise in writing; and
  - c) our rates for out-of-hours' work vary and we will quote for any such work on a case by case basis.
- 5.2 We shall invoice you as set out in the Proposal or in the absence of such information, as follows:
- a) in respect of a Proposal to purchase Prepaid Days, we shall invoice you immediately following signature of the agreement or subsequent Proposal (and you agree that you shall not be entitled to use any such Prepaid Days until we have received payment in full in cleared funds);
  - b) in respect of any Agile software development (as described in clauses 6.4 to 6.6 below) we shall invoice you prior to the commencement of each agreed Sprint for 50% of the Charges referable to such Sprint and we shall invoice you for the remaining 50% of such Charges on our delivery to you of such Sprint;
  - c) in respect of any other project-based delivery of Services (including but not limited to traditional or "waterfall" software development) we shall invoice on delivery of each agreed Project Milestone for the Charges referable to such Project Milestone; and
  - d) in respect of any other Services, we shall invoice you monthly in arrears (or at our sole discretion, on delivery of the Services).
- 5.3 You shall pay each invoice submitted by us as set out in the Proposal or in the absence of such information, as follows:
- a) within 30 days of the date of the invoice;
  - b) in full and in cleared funds to a bank account nominated in writing by us, and
  - c) time for payment shall be of the essence.
- 5.4 All Charges are exclusive of value added tax and other taxes, duties or assessments which apply to the Services which you shall pay in addition to the Charges.
- 5.5 If you fail to make any payment due to us in respect of the Proposal by the due date for payment, then you shall pay interest on the overdue amount in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 5.6 You shall pay all amounts due to us in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## **6. Software Development**

- 6.1 This clause 6 applies where the Proposal includes software development Services pursuant to which we shall develop software for you (Bespoke Software).
- 6.2 We develop Bespoke Software either on the basis of agreed Project Milestones or using an Agile approach as described in clauses 6.4 to 6.6 below, in either case as indicated on the Proposal. If the Proposal does not specify such information, then any development is carried

out using an Agile approach.

- 6.3 Where we develop Bespoke Software using a Project Milestone approach, we shall agree acceptance criteria with you (either in the Proposal or otherwise in writing) in respect of each milestone and both you and we shall test the milestone with reference to such criteria in accordance with clauses 6.7 and 6.8 below.
- 6.4 Where we develop Bespoke Software using an Agile approach, we shall deliver the Bespoke Software in Sprints and we shall agree (in the Proposal or otherwise in writing) the initial Stories that are to be delivered in each Sprint. At the commencement of the project we shall agree a number of development days to be allocated to each Sprint and the number of development days attributable to each Story.
- 6.5 During the project, you may request additional Stories to be delivered as part of any Sprint (or the scope of any Story to be increased) and in which case, we shall confirm to you in writing the number of development days required for each new or changed Story. You acknowledge and agree that we shall not be required to deliver any additional Stories in any Sprint (or to increase the scope of any Story) unless you agree in writing to pay for the corresponding additional development days or to remove an equivalent number of Stories from that Sprint.
- 6.6 We shall agree acceptance criteria with you in respect of each Story (either in the Proposal or otherwise in writing) and both you and we shall test each Sprint with reference to the acceptance criteria applicable to the Stories included in that Sprint in accordance with clauses 6.7 and 6.8 below.
- 6.7 You shall carry out all testing of a Project Milestone or Sprint within 5 Business Days of its delivery to you. If you notify us in writing within such time that the Project Milestone or Sprint fails in any material respect to pass the agreed acceptance tests, we shall attempt to remedy the relevant defect(s). If we are unable to correct defects which render the Bespoke Software inoperable for the principal purposes identified in the Specification within a period of 3 months from delivery to you, you shall be entitled to reject the Bespoke Software, in which case we shall refund to you any Charges you have paid in respect of that Bespoke Software and our obligations to each other under the Proposal shall immediately cease and we shall have no liability to you of any kind in relation to the applicable Services.
- 6.8 You shall be entitled at any time to permit Bespoke Software to be installed subject to any acknowledged defects (and any applicable Specification shall be deemed to be amended accordingly).

## **7. Intellectual property rights**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by us. Subject to your payment in full of all applicable Charges, we grant to you a non-exclusive, non-assignable license to use the Deliverables for your normal business purposes. Where the Deliverables include forms, templates, portals or other presentation layer items, you may adapt or modify these as you see fit for use in your business.
- 7.2 Where the Deliverables include Bespoke Software, the license granted pursuant to clause 7.1 is for use of the Bespoke Software only on the solution stack identified in the Proposal (unless otherwise approved by us in writing). In the absence of any such information the Bespoke Software is licensed for use on the LAMP (Linux, Apache, MySQL, PHP) stack.
- 7.3 If the Proposal indicates a Maximum Licensed Usage then the Bespoke Software must be used in accordance with this and any overage may be subject to a proportionate increase in Charges. We shall be entitled to monitor your usage of the Bespoke Software to determine

whether you at any time exceed the Maximum Licensed Usage. If such monitoring reveals you have exceeded any Maximum Licensed Usage we shall be entitled to recalculate the Charges with reference to your actual usage and our published price list and you shall pay the shortfall within 5 Business Days of our demand.

- 7.4 You may make such copies of the Bespoke Software as are reasonably necessary for your use in accordance with the license terms in this clause 7 and for the purposes of backup and security. You have no right to make, or authorize the making of, any other copies of the Bespoke Software.
- 7.5 You shall not sub-license, rent, lend, assign or transfer the Bespoke Software to any person without our prior written consent or allow access to it to any person who is not your employee or agent.
- 7.6 You may use the Bespoke Software with other software but you may not make adaptations or variations of the Bespoke Software without our prior written consent or disassemble, decompile, reverse translate or in any other manner decode the Bespoke Software except as permitted by law.
- 7.7 Subject to clause 7.10 and to your overriding duty to mitigate your loss, we shall defend, hold harmless and indemnify you against all loss, damage, claims, liabilities, fees, costs and expenses arising out of any action brought against you based on a claim that the Bespoke Software infringes any Intellectual Property Right of any third party, provided that:
- a) we are notified promptly in writing of any such claim;
  - b) you make no admission or settlement of such claim without our prior written consent;
  - c) we have sole control of the defence and any negotiations for compromise; and
  - d) you provide, at our expense, such assistance as we reasonably require.
- 7.8 If the Bespoke Software becomes or, in the opinion of qualified legal counsel, is likely to become the subject of any such claim, you will permit us:
- a) to replace all or part of the Bespoke Software with functionally equivalent software without any charge to you; and/or
  - b) to modify the Bespoke Software as necessary to avoid such claim, provided that the Bespoke Software (as amended) functions in substantially the same way as the Bespoke Software before modification; and/or
  - c) to procure for you a license from the relevant complainant to continue using the Bespoke Software.
- 7.9 If the Bespoke Software is determined in a court of law to be infringing and we are unable after commercially reasonable efforts to procure for you the right to continue using the Bespoke Software, or to provide you with functionally equivalent non-infringing software, our obligations to each other under the Proposal shall immediately cease (and where relevant, any license to use the Bespoke Software shall be terminated).
- 7.10 We shall have no liability for any claim:
- a) caused by your use of the Bespoke Software in combination with software not supplied or approved in writing by us (other than the solution stack identified in the Proposal); or
  - b) resulting from any unauthorized modification to the Bespoke Software or where it has been

used on a solution stack which has not been approved by us in writing; or

- c) based on the use of any version of the Bespoke Software other than the latest version later supplied by us, if such claim could have been avoided by the use of such supplied version; or
- d) where the claim arises in respect of a feature of the Bespoke Software which was specified by you in the Specification.

## **8. Limitation of liability**

- 8.1 Any Deliverables we produce are solely for your use and we shall have no liability whatsoever to any third party in respect of the contents of such Deliverables.
- 8.2 Except as expressly stated in these terms and conditions, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us in respect of the Proposal. Any condition, warranty, representation or other term concerning the supply of the Services which might otherwise be implied into, or incorporated in, the Proposal whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law. In particular, we do not warrant that any Bespoke Software will be uninterrupted or error-free and your sole remedy in respect of any defect in Bespoke Software shall be as set out in clause 6.7.
- 8.3 Unless the parties agree in writing an alternative provision as part of any project plan, you shall inspect, review or test (as the case may be) any Deliverable immediately on delivery to you and you shall within 5 Business Days of such delivery notify us in writing of any failure of the Deliverable to comply materially with any applicable Specification. If you fail to give notice within such time you shall be deemed to have accepted the Deliverable and shall have no further recourse to us in respect of any alleged non-compliance.



# Annex 1: Change Control Procedure

**1. General:** Neither party shall unreasonably withhold its agreement to any Change. No amendments to the Proposal shall be valid and no Change shall be effective unless and until it has been agreed in writing by a duly authorized representative of each party.

**2. Procedure:** The parties shall discuss any Change proposed by either party and such discussion shall result in either:

- (a) agreement in writing not to proceed further with the Change;
- (b) a written request for a Change by you; or
- (c) a recommendation for a Change by us

Where a written request for a Change is received from you, we shall, unless otherwise agreed, submit a Modification Note to you within fifteen (15) days (or such other time as the parties may agree in writing) containing the information set out in the Form Of Modification Note in section 4 of this Schedule and any other relevant information.

A recommendation for a Change by us shall be submitted as a Modification Note at the time of such recommendation.

For each Modification Note you will, within the period of validity of the Modification Note:

- (i) allocate a sequential reference number to the Modification Note;
- (ii) evaluate the Modification Note, and either:
  - \*request further information, which we shall promptly provide; or
  - \*discuss the terms of the Modification Note with us and request amendments thereto; or
  - \*approve the Modification Note (as submitted by us or as amended) or
  - \*reject the Modification Note.

You shall notify us of your approval or rejection of the Modification Note by notice in writing. No such notice shall be valid unless signed by your duly authorized representative. The parties shall keep a log of all Change requests and recommendations and Modification Notes and the current status of each.

If the parties agree a Change, and the relevant Modification Note, the signature of the Modification Note and any supplement or amendment thereto by both parties shall constitute a formal amendment to the Proposal to the extent only specified in the Modification Note and any such supplement or amendment.

**3. Cost implications of a change:** The implications of the Change (including its implementation) on the Charges or sums payable to us under these terms and conditions shall be calculated by reference to and on the basis of a 'work breakdown' or (if no such rates are applicable to the change) by reference to our direct costs reasonably incurred (or saved) as a result of the Change (and its implementation).

Where the parties are unable to agree on the implications of the Change on the Charges payable to us under these terms and conditions then, pending resolution of the dispute and at your request, we shall, at our discretion, implement the change. Any charges specified in a Modification Note shall, unless expressly stated otherwise in the Modification Note, be the maximum cost of the Change. For the avoidance of doubt, a Change may result in an addition to, or deduction from the payments to be made to us.

**4. Form of Modification Note:**

- Ref no: .....
- Date: .....
- Originator:.....
- Title of Change: .....
- Details of Change: .....
- .....
- Reasons for Change:.....
- .....
- .....
- Impact of Change:.....
- Timetable: .....
- Charges for Change: .....

**Your duly authorized representative**  
[STATE POSITION HELD]

Name (Block Capitals)

.....

Signed.....

**Jadu response:** Accept / Reject (Please circle)

Name (Block Capitals)

.....

Signed.....

**Your Project Lead**

Name (Block Capitals)

.....

Signed.....



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