Cloud Software Terms of Service
Cloud Software Terms of Service

1. Introduction and Scope of Agreement

1.1 These Cloud Software Terms of Services (agreement) govern your acquisition, use and licensing of the Spacecraft Cloud Software service, comprising of the following:

a) [LIST - i.e CXM and name the environments] ADD PRICING (or refer to pricing sheet and attach)

b) [LIST - i.e PayBridge (“Jadu PayBridge”)]

c) [List – i.e. Hub Integration Server (“Hub Integration Server”) and]

d) [LIST - i.e. WordPay Connector for PayBridge]

e) [List environments - i.e Live/ UAT]

f) [List users and if relevant “Concurrent Users”]

1.2 By using the Service/Software, you agree to be bound by the following terms and licence conditions. By doing so, you accept that you have read, understood and agree to be bound by the terms of this agreement. In any event, by using the Service/Software, you 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 Any new features that augment or enhance the current Service/Software, including the release of new tools and resources, shall be (and your use of the same shall be) subject to the terms of this agreement as amended from time to time.

1.4 Any contravention or breach by you (or any of your organisation’s users) of the terms of this agreement may result in the termination (or at Spacecraft’s sole discretion, suspension) of the Service/Software either in accordance with the terms of this agreement including, but not limited to the terms of the licence for the use of the Service/Software.

2. Definitions and Interpretation

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

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Contract Information: the information referred to in clause 1.1 and within the documents referred to in that clause.

Charges: the charges payable for the Service/Software.

Commencement Date: the commencement date of this agreement referred to in the Contract Information.

Continuum Release: an update of the Service/Software which corrects faults, adds functionality or otherwise amends or updates the Service/Software.

Critical Fault: a reproducible fault which substantially hinders or prevents you from using a material part of the functionality of the Service/Software in question.
Data Controller: as defined within the Data Protection Act 1998.

Data Processor: as defined within the Data Protection Act 1998.


Deliverables: any Documentation, Service/Software, know-how or other works created or supplied by us (whether alone or jointly) in the course of providing the Service/Software.

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

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

Environment: a single installation of the Service/Software (whether in a single server, virtual server or clustered server infrastructure) and also specifically referred to in the agreement as LIVE Environment (which is intended to provide content and software functionality to end users) or UAT Environment (which is for the purpose of conducting user acceptance testing by you before changes are made to a LIVE Environment).

Hosting Service: the hosting service to be provided by us to you as part of the Service/Software pursuant to the terms of this agreement and as set out in Schedule 2.

Hosted Software: the Service/Software indicated as hosted in the Contract Information.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks 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, 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.

Licence: any licence or other agreement between us in respect of the licensing of all or any part of the Service/Software.

Non-Critical Fault: any reproducible fault in the Service/Software other than a Critical Fault.

Personal Data: as defined within the Data Protection Act 1998.

Service/Software: the service and any software and associated media and any Documentation we provide to you as set out in clause 1.1.

Support Portal: the online support and incident-reporting help desk system provided by us at spacecraft.digital/support (or such other URL as we may advise from time to time).

Standard Support Service: the support service to be provided by us to you as part of the Service/Software pursuant to the terms this agreement.

Standard Support Hours: 8.00 am to 6.00 pm on Business Days.

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

Supported Continuum Version: the most recently issued Continuum Release together with the previous twelve Continuum Releases.

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.

Updating Service: the service to be supplied by us to you under clause 7.1 and clause 7.3.
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 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.

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 e-mails.

2.4 Words in the singular include the plural and those in the plural include the singular.

2.5 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.

3. Duration

3.1 Supply of the Service/Software by us to you shall commence on the Commencement Date and, subject to termination in accordance with the provisions of this agreement, shall continue for a term of [ ] year(s) [with the option to extend for a [ ] year(s) upon provision of 60 days’ written notice to us].

3.2 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.

4. Charges

4.1 In consideration of the provision of the Service/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 agreed in writing between the parties.

4.2 You shall pay the subscription charge for the Service/Software in accordance with the pricing set out (or referred to) in the Contract Information. The subscription charges are non-refundable. For the avoidance of doubt there will be no refunds or credits where you have used the Service/Software for only part of contract period or where there has been no use, or partial use of the Service/Software, or where you have obtained an addition or reduction in the Service/Software. For the avoidance of doubt, Spacecraft does 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 You shall pay all costs (at our then prevailing rates) and reasonable expenses incurred by us for work carried out by us in connection with any fault which is not covered by this agreement including for the avoidance of doubt any data recovery work undertaken by us 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 You shall reimburse any reasonable travel or subsistence expenses incurred by us where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Service/Software, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

4.5 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, you shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment has been made.
payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

4.6 All amounts payable under this agreement shall be exclusive of VAT or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.

4.7 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).

5. **Grant and Scope of Licence**

5.1 The Service/Software is subject to the following licence conditions:

5.2 Spacecraft and/or its licensors own all right and title to the intellectual property, designs and concepts in all elements of the Service/Software and Spacecraft warrants that it has the right to license use of the Service/Software to you.

5.3 We license use of the Service/Software to you on the basis of the following terms and for the duration set out in the clause 3. We do not sell the Service/Software to you and accordingly ownership of the Service/Software shall not pass to you.

5.4 In consideration of the payment of the subscription charge for the Service/Software, Spacecraft hereby grants to you a non-exclusive, non-transferable licence to use the Service/Software on the terms of this Licence for the term of the agreement.

5.5 You may:

a) use the Service/Software for your normal business purposes only;

b) provided you comply with the provisions in clause 8, make such copies of the Service/Software as are reasonably necessary for back-up purposes;

c) receive and use any free supplementary software code or updates of the Service/Software incorporating "patches", corrections of errors and upgrades as may be provided by the Spacecraft from time to time (all of which shall be issued subject to the terms of this Licence); and

d) use any Documentation in support of the use permitted under this clause 5.5 and make such copies of the Documentation as are reasonably necessary for its lawful use.

5.6 We shall be entitled to monitor your usage of the Service/Software (and at our request you shall provide us with all access necessary to carry out such monitoring) to determine whether you at any time exceed the Maximum Concurrent Users (as defined in clause 8.1(l) of this agreement). If our monitoring reveals you have exceeded the Maximum Concurrent Users, we shall be entitled to recalculate the monthly subscription charge for the Service/Software in accordance with the prevailing Charges with reference to your actual usage and you shall pay the shortfall within 5 working days of our demand.

5.7 Neither party shall transfer your rights and obligations under this Licence to another person, entity or organisation 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 Continuum Release which is acquired by you (whether under this agreement or any other agreement between the parties) during the course of the relevant Licence and which accordingly becomes part of the software defined as the Service/Software under that Licence; 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 any Solution Stack other than as indicated and defined in the Contract Information;
e) in respect of any version other than a Supported Continuum 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 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 Continuum Releases:

a) as part of the Updating Service, we shall make Continuum Releases available to you without charge (either by download or the supply of DVDs or other media, at our discretion); and

b) you shall be responsible for installing any Continuum Release and for the costs of rebuilding your forms, templates and other presentation layer items following the installation of any such Continuum Release. Any assistance we provide with installation or building of presentation layer items shall be at our then prevailing professional rates.

7. Support Service, Updating Service and Hosting Service

7.1 We shall supply, and you shall take and pay for, the following services:

a) the Standard Support Service;

b) the Updating Service; and

c) the Hosting Service.

7.2 In relation to the Standard Support Service:

a) the Standard Support Service shall be provided during the Standard Support Hours (or such other hours as we may agree in writing) and shall comprise:

b) online support via Support Portal to 5 named users at your organisation in respect of technical issues and errors in the Supported Software. Our support staff shall be entitled to close any ticket which does not relate to a technical issue or error or where they are able to direct you to the solution on Support Portal or in any Documentation;

c) telephone support in respect of technical issues and errors in the Supported Software that you have logged via Support Portal; and

d) diagnosis and, where possible, correction of faults in the Service/Software;

e) where a Non-Critical Fault is to be corrected in a forthcoming Continuum Release, then for a reasonable period before the issue of such Continuum Release we may decline to provide assistance in respect of that Non-Critical Fault; and

f) 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 Continuum Releases of the Service/Software as and when required and in whatever form (including by way of a local fix or patch of the Service/Software or a temporary by-pass solution) as we determine in our absolute discretion; and

b) we shall supply to you all revisions to the Documentation which are necessary in order to reflect any Continuum Release acquired by you.

c) Application of a Continuum Release is by arrangement with you, pursuant to the Updating Service. To ensure that we do not introduce either Critical or Non-Critical Faults (together Faults) to your Live Environment(s), 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 Supported Software 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 Supported Software on your UAT Environment, inform you in writing and require you to perform a user acceptance test of the changes, as applied to your UAT Environment, within an agreed reasonable time. We shall not apply any changes to your LIVE Environment and Supported Software until we have received a written confirmation from you that the Service/Software operates as required on the UAT Environment. We shall not be liable for Faults in the Service/Software 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 applied 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.

d) All dates supplied by us for the delivery of Continuum Releases or the provision of any other service shall be treated as approximate only. We shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

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 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 sub-contractors.

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 sub-contractors;

c) use of the Supported Software 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;

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 Continuum 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) user error; or

g) Faults in the Service/Software identified on your LIVE Environment that cannot be replicated on your UAT Environment.

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 at our then prevailing professional service rates.

7.8 If you report issues in a Supported Continuum Release older than the most recently issued Continuum Release, we shall provide you with technical advice and assistance in upgrading to the latest Continuum Release. If the relevant issue is not resolved following such upgrade we shall schedule a fix in a subsequent Continuum Release at our discretion (with reference to the severity of the reported issue and the impact upon your business or organisation).

8. Obligations, Restrictions and Requirements

8.1 Except as expressly set out in the conditions of this agreement or as permitted by any local law, 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 (but 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 express written permission from Spacecraft 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 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 (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 inter-operability of the Service/Software with another software program, and provided that the information obtained by you during such activities:

(i) is used only for the purpose of achieving inter-operability of the Service/Software with another software program;

(ii) is not disclosed or communicated without Spacecraft’s prior written consent to any third party to whom it is not necessary (as determined in Spacecraft’s sole discretion) to disclose or communicate it; and

(iii) is not used to create any Service/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 third parties other than your employees or sub-contractors to access the Service/Software except where we have provided our advance 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 use of the Service/Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;

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” text and hyperlink that may be included in any forms or templates developed and supplied to you by us, our agents or authorised partners;

k) not to provide, or otherwise make available, the Documentation or Service/Software in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person other than your employees without prior written consent from us;

l) not to allow more users to access the Service/Software concurrently than the maximum number of licensed users and/or the concurrent users [insert maximum number of control centre users](and in the absence of such agreement will be limited to a maximum of 999 of your control centre users) (Maximum Concurrent Users);

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 to knowingly publish, post, link to or transmit 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; and

o) not to attempt to gain unauthorised access to the 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 would commit a criminal offence under the Computer Misuse Act 1990. Spacecraft will report any such breach to the relevant law enforcement authorities and Spacecraft will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Service/Software will cease.

8.2 You accept that Spacecraft is not responsible for the content posted or otherwise appearing on the Service/Software and that you are exposed to the content of the Service/Software at your own risk.

8.3 Spacecraft may, but has no obligation to, remove content that Spacecraft determines in its sole discretion are unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any party’s intellectual property or the terms of this agreement (Inappropriate Content). You must not upload or transmit any Inappropriate Content using the Service/Software.

8.4 You understand and accept that the technical processing and transmission of the Service/Software, including your content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or mobile devices. Spacecraft is 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.

8.5 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.

8.6 You shall ensure that you have in place public liability insurance to cover any injury that could be suffered by our personnel at your premises.

8.7 You shall provide us and our staff and all other persons duly authorised by us with full, safe and uninterrupted access (including remote access with a network connectivity speed of at least 128KB per second) 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.

8.8 You shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by your employees.

8.9 You shall:

a) co-operate 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. Your Application Code and Developer API and SDK Terms of Use

9.1 You may develop applications and access content and data stored within applications provided through the Service/Software via an API and SDK (Software Development Kit) which may be provided and maintained by Spacecraft as part of the Service/Software.

9.2 If either you, or a third party acting on your behalf, or any user of the Service/Software at your company/organisation creates applications or program code using the Service/Software, you authorise Spacecraft to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Spacecraft to provide the Service/Software in accordance with this agreement. Save as stated otherwise elsewhere in this agreement, Spacecraft acquires no right, title or interest from you or your licensors under the terms of this agreement in or to such applications or program code, including any intellectual property rights therein.

9.3 Any use of a Jadu API, including use of an API through a third-party product, is subject to the following terms:

a) Abuse or excessively frequent requests to the Service/Software via a Jadu API may result in the temporary or permanent suspension of your access to such API. Spacecraft, in its sole discretion, will determine what constitutes abuse or excessive usage of any API. Spacecraft will make an attempt via email to warn you prior to suspension.

b) Spacecraft reserves the right at any time to modify or discontinue, temporarily or permanently, your access to the API (or any part thereof) with or without notice.

c) Where you use a Jadu API to produce your own portal onto the Spacecraft Jadu CXM Service/Software, you must notify all end users of that portal that their user information may be used to authenticate them if they access CXM-based portals used by other third parties and you must obtain their consent before registering them as users. You agree to indemnify and keep indemnified Spacecraft against all costs, losses and expenses it may incur as a result of you failing to secure such consent.

d) Your attention is also drawn to the provisions of clause 16 in respect of the use of any Jadu API.

10. Collection of Browser Usage Data and Statistics

10.1 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 browser-related information from you each time you or your authorised users access the Service/Software:

a) technical information, including the Internet Protocol (IP) address of your computer, your login information including contact details, browser type and version, time zone setting, browser plug-in types and versions, operating system and platform; and
11. Non-Jadu Products and Services

11.1 Spacecraft or third parties (including your own organisation) may from time to time make available to you (e.g. through the Jadu Library) third-party applications (Non-Jadu Applications), products or services, including but not limited to implementation, customisation and other consulting services. Any acquisition by you of such non-Jadu products or services, and any exchange of data between you and any non-Jadu provider, is solely between you and the applicable non-Jadu provider. Spacecraft does not provide any warranty for or support any non-Jadu products or services, whether or not they are designated by Jadu as "certified" or otherwise and accepts no liability whatsoever for any loss arising from the use of such products and services, except as agreed separately in writing.

11.2 If you install or enable Non-Jadu Applications for use with the Service/Software, you acknowledge that Spacecraft may allow providers of those Non-Jadu Applications to access your data as required for the interoperation of such Non-Jadu Applications with the Service/Software. Spacecraft shall not be responsible for any disclosure, modification or deletion of your data resulting from any such access by Non-Jadu Application providers. The Service/Software shall allow you to restrict such access by preventing your users from installing or enabling such Non-Jadu Applications for use with the Service/Software.

11.3 The Service/Software may contain features designed to interoperate with Non-Jadu Applications (e.g. social media applications). To use such features, you may be required to obtain access to such Non-Jadu Applications from their providers. If the provider of any such Non-Jadu Application ceases to make the Non-Jadu Application available for interoperation with the corresponding Service/Software features on reasonable terms, Spacecraft may cease providing such Service/Software features without entitling you to any refund, credit, or other compensation. If the Service/Software allows user authentication using such Non-Jadu Applications you acknowledge that Spacecraft is not responsible for their security protocols or performance and you agree that you use such Non-Jadu Applications entirely at your own risk.

11.4 The Service/Software may allow authentication using Non-Jadu Applications such as social media applications.

12. Professional Services

12.1 Professional services include, but are not limited to, training, software development, software testing, software implementation, design, project and programme management, and consultancy. Any such services shall be delivered (by Spacecraft or by its sub-contractors) at our then prevailing professional rates.

12.2 For the avoidance of doubt, unless specifically agreed by Spacecraft in writing, the Service/Software provided under these terms and conditions excludes the development, hosting or support of any forms, templates, portals or other presentation layer items produced (by either Spacecraft or by you) to operate in conjunction with or to interface with the Service/Software.

13. Intellectual Property Rights

13.1 Spacecraft and/or its licensors own all right and title to the intellectual property, designs and concepts in all elements of the Service/Software and Spacecraft warrants that it has the right to license use of the Service/Software to you.

13.2 You acknowledge that all Intellectual Property Rights in the Service/Software throughout the world belong to Spacecraft 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.

13.3 Save where otherwise expressly agreed in writing between the parties, all legal and beneficial intellectual property rights (including but not limited to copyright) in or arising out of any Deliverables provided by us pursuant to any professional services shall at all times vest in Spacecraft. Spacecraft shall grant to you a perpetual, non-exclusive, non-assignable licence to use such Deliverables for your normal business purposes.

14. Customer Data

14.1 You (and/or the End User) shall own all rights, title and interest in and to all data inputted by the End User (or by Spacecraft or its appointed agent on your behalf) for the purpose of using the Service/Software or facilitating your use of the Service/Software (Customer Data) and you shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Customer Data.
14.2 In the event of any loss or damage to Customer Data, your sole and exclusive remedy shall be for Spacecraft to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Spacecraft in accordance with the archiving procedure described in the documentation made available by Spacecraft from time to time. Where such loss or damage is caused by matters or circumstances beyond Spacecraft’s reasonable control (including but not limited to viruses, denial-of-service attacks or any other form of cyber-attack) any such restoration shall be at your cost. Spacecraft shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party except those third parties sub-contracted by Spacecraft to perform services related to Customer Data maintenance and back-up.

14.3 Spacecraft shall, in providing the Service/Software, comply with documentation relating to the privacy and security of the Customer Data available at jadu.net or such other website address as may be notified to you from time to time, as such documentation may be amended from time to time by Spacecraft in its sole discretion.

14.4 If Spacecraft processes any personal data on your behalf when performing its obligations under this agreement, it shall do so only to the extent, and in such manner, as is necessary for the purpose of providing the Service/Software in accordance with your instructions and the parties record their intention that you shall be the Data Controller and Spacecraft shall be a Data Processor and in any such case:

a) each party shall observe their obligations under the Data Protection Requirements;

b) Spacecraft acknowledges and agrees that the Personal Data will not be transferred or stored outside the European Economic Area without your prior written consent;

c) You shall ensure that you are entitled to transfer the relevant Personal Data to Spacecraft so that Spacecraft may lawfully use, process and transfer the Personal Data in accordance with this agreement on your behalf;

d) You shall ensure that all End Users have been informed of, and have given their consent to, such use, processing, and transfer as required by the Data Protection Requirements and you acknowledge that you are responsible for obtaining any necessary consent for Personal Data to be submitted or uploaded to, or processed via the Service/Software;

e) Spacecraft shall process the Personal Data only in accordance with the terms of this agreement and any lawful instructions reasonably given by you from time to time;

f) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage;

g) each party shall ensure that their respective personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 14; and

h) You hereby indemnify Spacecraft and will keep Spacecraft indemnified against all losses, damages, costs or expenses and any other liabilities (including legal fees) incurred or awarded against Spacecraft, or agreed to be paid by Spacecraft as part of any settlement negotiated and/or approved by you, arising as a result of any third party claim brought against Spacecraft in connection with: (a) your failure to obtain the appropriate consent for Spacecraft to process Personal Data as anticipated under this agreement; and/or (b) Spacecraft’s processing of Personal Data in accordance with the terms of this agreement.

15. Our Warranties

15.1 We represent and warrant to you that:

a) the Service/Software will be performed:
   (i) in accordance with all applicable laws and regulations; and
   (ii) with reasonable skill and care;

b) to the best of our knowledge and belief, the Deliverables will not infringe the Intellectual Property Rights of any third party; and

c) at the Commencement Date, we have obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for us to perform our service obligations under this agreement.

15.2 If, during the term of this agreement, we receive written notice from you of any breach by us of the representations and warranties contained in clause 15.1(a), we shall, at our own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to you and repay to you all sums which you have paid to us under this agreement during the year in which the termination
occurs, less a charge for the Service/Software performed up to the date of termination. You shall provide all information reasonably necessary to enable us to comply with our obligations under this clause 15.2. If the provision in this clause is utilised, this clause (together with paragraph 2 of Schedule 2 in respect of Hosting Service) sets out your sole remedy and our entire liability for breach of clause 15.1(a).

15.3 We warrant that:

a) the Service/Software is tested in accordance with quality assurance procedures complying with the ISO 9000/2001 standard;

b) if we supply any software to you on a DVD or other similar media, such media is (at the time it is supplied) free from defects in design, material and workmanship under normal use;

c) the Service/Software will, when properly used perform substantially in accordance with the functions described in the Documentation; and

d) the Documentation correctly describes the operation of the Service/Software in all material respects,

for a period of 30 days from the date of installation of software provided as part of the Service/Software (Warranty Period). If a defect in the DVD or other media occurs during the Warranty Period, we will replace it free of charge if you return it to us with (so far as you are able) a documented example of such defect or error.

15.4 If, within the Warranty Period, you notify us in writing of any defect or fault in the software provided as part of the Service/Software as a result of which it fails to perform substantially in accordance with the Documentation, we will, at our sole option, either repair or replace the software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.

15.5 The warranty does not apply:

a) if the defect or fault in the Service/Software results from you having amended the Service/Software;

b) if the defect or fault in the Service/Software results from you having used the Service/Software in contravention of the terms of this agreement;

c) if the 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;

d) to any software created by you to inter-operate with the Service/Software (unless otherwise expressly agreed in writing); or

e) to the ability of the Service/Software to inter-operate with any third party software (whether produced by you or otherwise) unless otherwise expressly agreed in writing.

16. Liability and Indemnities

16.1 We shall not under any circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with your use of the Service/Software for:

a) loss of profits, sales, business, or revenue;

b) business interruption;

c) loss of anticipated savings;

d) loss or corruption of data or information;

e) any losses (including in relation to any security breaches) arising in connection with any defects or malicious code present in any Third Party Libraries (meaning any components and libraries used by us within the Service/Software which are developed and licensed by third parties);

f) loss of business opportunity, goodwill or reputation; or

g) any indirect or consequential loss or damage.
16.2 Other than the losses set out in clause 16.1 (for which we are not liable), our maximum aggregate liability under or in connection with your use of the Service/Software whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the proportion of the subscription charge for the Service/Software in accordance with the pricing set out in this agreement attributable to the individual Service/Software product giving rise to the liability. This maximum cap does not apply to clause 16.3.

16.3 Nothing in this agreement shall limit or exclude our liability for:

a) death or personal injury resulting from our negligence;

b) fraud or fraudulent misrepresentation; or

c) any other liability that cannot be excluded or limited by English law.

16.4 You understand and accept that Spacecraft uses third parties and hosting partners to provide the hardware, software, networking, storage, and related technology required to run the Service/Software and Spacecraft makes no representation as to the service levels provided and shall not be responsible for any failure or down-time of such services. Without prejudice to any other provision of this agreement, Spacecraft’s total liability to you in respect of such services shall in no circumstances exceed a reasonably reflective proportion of a corresponding sum Spacecraft recovers from the third party or hosting partner in respect of any breach.

16.5 Except as expressly stated in this agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Spacecraft. Any condition, warranty, representation or other term concerning the provision of the Service/Software which might otherwise be implied into, or incorporated in, this agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

16.6 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 as a direct or indirect result of, or in any way related to, any breach of this agreement, any modifications to the Service/Software, any use by you of the Service/Software or any negligent or wrongful act of you or your officers, employees, contractors or agents.

16.7 You acknowledge that we are not responsible for any of your content, data, files, documents or links (Licensee Materials) held within any system database used by the Service/Software 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 the Licensee Materials.

16.8 We accept no liability whatsoever for any costs incurred by you in rebuilding your forms or templates following the installation of any updated version of the Service/Software. We will provide assistance with rebuilding such forms or templates at our then prevailing professional rates.

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 Service/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 of section 123 of the Insolvency Act 1986;

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 on connection with the winding up 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 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 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, Spacecraft may terminate this agreement (or at Spacecraft’s option suspend any Service/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 Service/Software inhibiting or preventing Spacecraft from performing its 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 provision of any Service/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 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 clauses 1, 2, 13,14,16,18 and 19) 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 receive the Service/Software shall cease automatically.

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

17.10 Upon termination or expiry for any reason:

a) all rights granted to you under the Licence pursuant to the terms of this agreement shall cease;

b) you must cease all activities authorised by the Licence; and

c) you must immediately destroy or return to us (at our option) all copies of the software provided to you as part 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 Service/Software or otherwise in connection with this agreement to leave our employment.

19. Confidentiality and Publicity

19.1 Except to the extent set out in this clause 19.1, or as required or provided by 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 received 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) (Confidential Information) as confidential; and

b) (subject to clause 19.2) 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).

19.2 Nothing in this clause 19 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.

19.3 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 19.1 above). Where we request you provide a reference for us, you shall not unreasonably refuse or delay your response to such request.

19.4 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.

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 any event beyond our reasonable control including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our employees or the employees of any other relevant party), failure of a utility service, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, failure of suppliers or subcontractors, accident, fire, flood and epidemics. In the event that either of us is delayed or prevented from performing our 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. 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 Service/Software.

20.7 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.

20.8 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 us.

20.9 This agreement will not create nor will it be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this agreement.

20.10 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

FOR AND ON BEHALF OF
SPACERCREATIVE LIMITED:

Signed ..................................................

Name....................................................

Position.............................................

Date................................................
FOR AND ON BEHALF OF THE LICENSEE
(“You”):
[Insert name, address]

Signed............................................................................

Name ...............................................................................

Position...........................................................................

Date ...............................................................................
Schedule 1 – Standard Support Service Levels

Support Ticket Priority and Types

1. The Standard Support Service defines four separate severity levels for a ticket:
   • Level 1: Complete outage of Spacecraft hosted / managed and supported services.
   • Level 2: Issues with functionality or errors with software that prevents operation.
   • Level 3: Issues with functionality or errors with software that inhibits but does not prevent operation.
   • Level 4: Minor functional Issues, content related problems and queries, or customer service comment /complaint

2. The types of issues that can be raised under this agreement are defined as:
   a) Bug: A deviation from the intended operational parameters of the Supported Software that results in unexpected behaviour.
   b) Styling Issue: Where the front-end deviates in style from the signed off Spacecraft design except where such deviations are as a result of changes not made by us.
   c) Server Configuration: Where a server hosting the Hosted Software is configured in line with the software system requirements but where there is an issue that affects the operation of the supported software.
   d) Knowledge Issue: Any ticket raised that either requests instruction or that is raised under another issues type and subsequently found to be as a result of lack of product knowledge. If such tickets are raised on a regular basis or in large numbers then we will refer you to attend a chargeable training course.

3. For the avoidance of doubt, if the issue in question is not part of the Standard Support Service, or if any tickets raised by you do not fall under the definitions shown in paragraph 2 above, it will be considered to be a request for change and shall be chargeable at our then prevailing professional service rates.

4. Target Response Times

1. We will respond to all tickets within a maximum of three hours of them being raised regardless of priority and type within the Standard Support Hours. For the purposes of this agreement the time at which an issue is raised is considered to be the date and time at which it is entered into the Support Portal. Any issue raised by your staff or agents via telephone call will be logged on their behalf within the portal.

2. Where issues are raised by telephone call then the first response target of three hours 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 issue was logged in the Support Portal.

3. Due to the varying types of support tickets and the dependency on both your and our sub-contractor’s interaction, we do not offer a resolution target.
Schedule 2 – Hosting Provisions

1. The Hosting Service shall include the hosting by us or our sub-contractors of the Hosted Software together with the provision of such server maintenance services, infrastructure, hardware and bandwidth as are necessary to provide such hosting.

2. We shall back up and archive the Hosted Software source code and database once per day (using daily differential and weekly full backups). We shall maintain any such backups for at least two weeks.

3. We will respond to any outage, technical issue or service interruption as soon as reasonably practicable. We will restore any severely affected system from the latest backup and bring it back into 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 the provisions of clause 4.3 of this agreement shall apply.

4. We shall provide virus-checking of the Hosted Software on the commencement of the Hosting Service and periodically thereafter. We shall also provide firewall protection.

5. We shall provide such server monitoring, log file rotation, application of server operating system updates and patches and user account management services as we reasonably consider necessary for the provision of a reliable and consistent Hosting Service.

6. We 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 and shall use our reasonable endeavours to restore the Hosting Service as soon as is reasonably practicable following any such suspension.

7. You shall follow any instructions given by us in respect of the Hosting Service which we reasonably consider necessary for safety or to maintain or improve the quality of the Hosting Service.

8. Unless we agree otherwise in writing, your use of the Hosting Service shall be limited to 100GB per month. 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.

9. You acknowledge that we are not responsible for any of your content, data, files, documents, links or personal data (as defined within the Data Protection Act 1998) (Client Materials) held within any system database used by the Software 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 the Client Materials including any claim from any data subject that his personal data has been processed unlawfully (“data subject” and “process” having the meanings given in the Data Protection Act 1998).

10. You shall keep secure any user names and passwords related to the Hosting Service and shall notify us immediately of any known or suspected unauthorised use of the Hosted Software or breach of security, including the loss, theft or unauthorised disclosure of one of your passwords or other security information.

11. 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.

12. 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 our data centres, 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 minimise the effect of any such changes on your use of the Hosting Service.