Professional Services
Terms of Service

These are the terms of service for:

- Jadu Limited
- Jadu Creative Limited
- Jadu Inc
- Jadu Software Pty Limited
# Terms of Service Contents:

**Professional Services**

**Terms of Service**
- Interpretation 2
- Basis of these Professional Services 4
- Supply of Services 4
- Your obligations 6
- Charges and payment 6
- Software Development 8
- Intellectual property rights 8
- Confidentiality 10
- Limitation of liability and Insurance 11
- Termination 12
- Consequences of termination 13
- General 14
  - *Annex 1: Change Control Procedure* 16
Professional Services
Terms of Service

In relation to the provision of Professional Services the parties agree:

Any Professional Services work set out in any detailed proposal for the provision of Professional Services ("Proposal") to be provided by us is subject to our Professional Services Terms of Service set out below and your acceptance of the quotation in the Proposal constitutes your acceptance of the Terms of Service set out below.

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 of Service, the following definitions apply:

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 these Terms of Service.

Business Day: a day (other than a Saturday, Sunday or any nationally recognized public holiday in the Territory referred to).

Charges: the charges payable by you for the supply of the Services in accordance with clause 5.

Customer Personal Data: Customer Data which is Personal Data within the meaning of the Applicable Law.

Data Protection Requirements: the Applicable Law of your Territory about the processing of personal data and privacy.

Intellectual Property Rights: 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, 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.
**Project Milestone:** In respect of any project-based delivery of Services, an agreed milestone of the project.

**Services:** The professional services and 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.

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

**Third Party Libraries:** Any components and libraries used by us in the delivery of the Services which are developed and licensed by third parties, whether such components and libraries are used within our core platform software, any Service deliverables or otherwise and whether they are selected by you or by us.

1.2 Unless the context otherwise requires, the following rules of construction apply:

a) The spelling of words in these Terms of Service 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.

b) The headings in these Terms of Service do not affect its interpretation. Except where the context otherwise requires, references to clauses are clauses of these Terms of Service.

c) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

d) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

e) A reference to any party shall include that party’s personal representatives, successors and permitted assigns.

f) A reference to any Applicable Law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time.

h) A reference to writing or written includes emails.
2. **Basis of these Professional Services**

2.1 These Terms of Service apply to the Proposal for the supply of Services by us to you.

2.2 In the event of any inconsistency, any terms set out in the Proposal shall prevail over these Terms of Service. 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 of Service together constitute and form the agreement 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 these Terms of Service or in the Proposal.

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 Proposal or quotation given by us can be revoked at any time prior to signature by us of the Proposal, or in the event that we have provided a signed copy, upon receipt by us of your signed copy of the Proposal.

3. **Supply of Services**

3.1 Subject to clause 9.5, 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 of Service. 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.

3.7 We may provide additional warranties (if the parties have entered into a separate contract) 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, request a change to the Services and/or any relevant Specification. Within 7 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 10 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 a subsequent project schedule. If at any time 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:

<table>
<thead>
<tr>
<th>Notice of cancellation/delay</th>
<th>Chargeable sum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediate</td>
<td>100% of the value of remaining provision of Services for 1 week then 50% up to 4 weeks after cancellation/delay date.</td>
</tr>
<tr>
<td>Up to 1 week</td>
<td>50% of the value of remaining provision of Services up to 3 weeks after cancellation/delay date.</td>
</tr>
<tr>
<td>Up to 2 weeks</td>
<td>50% of the value of remaining provision of Services up to 2 weeks after cancellation/delay date.</td>
</tr>
<tr>
<td>Up to 3 weeks</td>
<td>50% of the value of remaining provision of Services up to 1 week after cancellation/delay date.</td>
</tr>
</tbody>
</table>

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 Services. 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 Services 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 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;

c) our rates for out-of-hours’ work vary and we will quote for any such work on a case by case basis; and

d) we shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services provided any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

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 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 licence to use the Services deliverables for your normal business purposes. Where these deliverables include forms, templates, portals or other presentation layer items, you may adapt or modify these as you see fit for use in your
Where the Service deliverables include Bespoke Software, the licence 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.

If the Proposal indicates a maximum number of licensed or concurrent users then the Bespoke Software may be used only by such number of licensed or concurrent users. The licence may, with our prior written consent, be extended to additional licensed or concurrent users (and the Proposal amended accordingly 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 number of concurrent users (if applicable). If such monitoring reveals you have exceeded any agreed maximum number of concurrent users 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.

You may make such copies of the Bespoke Software as are reasonably necessary for your use in accordance with the licence 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.

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.

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.

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.

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 licence from the relevant complainant to continue using the Bespoke
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 licence 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. Confidentiality

8.1 Except to the extent set out in this clause 8, 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 any software or software documentation 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) (Confidential Information) as confidential; and

b) (subject to clause 8.2) 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 the Proposal (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).

8.2 Nothing in this clause 8 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the work in relation to the Proposal 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.

8.3 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 8.1 above). Where we request you provide a reference for us, you shall not unreasonably refuse such request.

8.4 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.
9. **Limitation of liability and Insurance**

9.1 Nothing in these Terms of Service will:

a) limit or exclude death or personal injury resulting from negligence;

b) limit or exclude any liability for fraud or fraudulent misrepresentation; or

c) limit or exclude any liabilities that may not be limited or excluded under Applicable Law.

9.2 Subject to clause 9.1:

a) Neither party shall have any 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 9.2(a)(ii) to 9.2(b) (xiii) apply whether such losses are direct, indirect, consequential or otherwise.

b) We shall not be liable to you for any loss or corruption of any data, database or software; provided this clause 9.2(b) shall not protect us unless we have fully complied with our obligations with the Data Protection Requirements with respect to the processing of any Customer Personal Data;

c) although we shall use reasonable care and skill in selecting any Third Party Libraries used in the provision of the Services we shall have no liability whatsoever to you for any losses (including in relation to any security breaches) arising in connection with any defects or malicious code present in such Third Party Libraries; and

d) our total liability to you in respect of all other losses arising under or in connection with the Proposal and/or these Terms of Service, whether in contract, tort (including negligence), breach
of statutory duty, or otherwise, shall in no circumstances exceed 125% of the Charges paid or payable by you in respect of the Services under the Proposal.

9.3 Any Service 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 Service deliverables.

9.4 Except as expressly stated in these Terms of Service, 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.

9.5 You shall inspect, review or test (as the case may be) any Service 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 Service 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 Service deliverable and shall have no further recourse to us in respect of any alleged non-compliance.

9.6 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.

9.7 This clause 9 shall survive termination of these Terms of Service.

10. Termination

10.1 Without limiting any other rights or remedies but subject to clause 10.2, either of us may terminate these Terms of Service with immediate effect by giving written notice to the other party if:

a) the other party commits a material breach of these Terms of Service which is irremediable or (if such breach is remediable) the other party fails to remedy that breach within 30 days of that party being notified in writing to do so;

b) 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;

c) 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 (where a company) 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;

d) 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 of that other party (being a company) 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;

e) 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;

f) 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 (being a company);

g) the holder of a qualifying floating charge over the assets of that other party (being a company)
has become entitled to appoint or has appointed an administrative receiver;

h) 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;

i) 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 10.1(b) to clause 10.1(h) (inclusive); or

j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a
substantial part of its business.

10.2 Clauses 10.1(b) to 10.1(i) 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.

10.3 Without limiting our other rights or remedies, we may terminate these Terms of Service (or
suspend Services under it) with immediate effect by giving written notice to you if you fail to
pay any amount due in relation to the Services on the due date for payment or if you
repeatedly fail to implement the advice given in respect of the Services or interfere with the
Services, whether or not such interference is performed by a third party under your instruction
or if your staff are abusive or behave unreasonably to our staff.

10.4 Without limiting our other rights or remedies, we may suspend provision of the Services under
these Terms of Service if you become subject to any of the events listed in clause 10.1(b) to
clause 10.1(j), or we reasonably believe that you are about to become subject to any of them.

11. Consequences of termination

11.1 On termination of these Terms of Service for any reason:

a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in
respect of Services supplied but for which no invoice has been submitted, we shall submit an
invoice, which shall be payable by you immediately on receipt;

b) you shall return any Service deliverables which have not been fully paid for. If you fail to do so,
then we may enter your premises and take possession of them;

c) the accrued rights, remedies, obligations and liabilities of each of us as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of these Terms of Service which existed at or before the date of termination or expiry; and

d) clauses which expressly or by implication survive termination shall continue in full force and effect.

12. **General**

12.1 Neither of us shall be liable to the other in respect of any losses, damages, costs or expenses as a result of any delay or failure to perform our obligations under the Proposal and/or these Terms of Service 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, viruses, denial-of-service attacks or any other form of cyber-attack, accident, fire, flood, epidemics and pandemics. In the event that either of us is delayed or prevented from performing our obligations under the Proposal and/or these Terms of Service, 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 the Proposal and/or these Terms of Service; and

c) resume performance of its obligations under the Proposal and/or these Terms of Service as soon as reasonably possible after the removal of the cause of the delay or prevention.

12.2 Any notice to be served in respect of the Proposal and/or these Terms of Service 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. 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.

12.3 Our waiver of any right under these Terms of Service 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 these Terms of Service or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

12.4 If a court or any other competent authority finds that any provision of the Proposal and/or these Terms of Service (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 the Proposal and/or these Terms of Service shall not be affected. If any invalid, unenforceable or illegal provision of the Proposal and/or these Terms of Service 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.

12.5 Nothing in these Terms of Service 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.

12.6 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 Services.

12.7 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal
in any other manner with any or all of your rights or obligations under these Terms of Service
without the other party’s consent not to be unreasonably withheld or delayed.

12.8 Except as set out in these Terms of Service, no variation of the Proposal, or the inclusion or
the introduction of any additional terms and conditions in relation to this Terms of Service shall
be effective unless it is agreed in writing and signed by us.

12.9 If your Territory is in the UK, these Terms of Service 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 anyone who is not a party to these Terms of Service. 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
titled 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.

12.10 These Terms of Service and the Proposal and any dispute or claim arising out of or in
connection with them or their 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 12.10(a); or

f) Scotland in the case of 12.10(b); or

g) the State and Federal courts of Kansas in the case of 12.10(c); or

h) the Australian Capital Territory in the case of 12.10(d).
Annex 1: Change Control Procedure

1. General: Neither party shall not 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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