SOFTWARE AS A SERVICE AGREEMENT

Delib

PARTIES:

DELIB	DELIB LTD, 35 King Street, Bristol BS1 4DZ
THE CLIENT	

AGREEMENT DETAILS:

Item	Description	Details		
1.	Product	Citizen Space		
2.	Product Specifications			
3.	Additional Services			
4.	Client responsibilities	See Section 4 in Terms & Conditions – Client Obligations		
5.	Term	(a) **Agreement Commencement Date:**		
		(b) **Product Deployment Date:**		
		(c) **First Subscription Period:** 12 months from the Agreement Commencement Date;		
		(d) **Subscription Period renewals:** This Agreement renews annually unless terminated (See Sections 2 and 10 in Terms and Conditions)		
6.	Key Client Contact	Name:		
		Position:		
		Phone:		
		Email:		
7.	Fees			
			TOTAL:	
		All amounts are exclusive of VAT.		
8.	Payment method	Payment must be made within 30 days of the date on the invoice, by BACS.		

Executed as an agreement on the dates below:

Signed for and on behalf of Delib:	DELIB LTD Company No. 5158056
By its authorised representative:	[Signature]
Name:	
Title:	
Date:	

Signed for and on behalf of the Client:	[Full name of The Client]
By its authorised representative:	[Signature]
Title:	
Date:	

BACKGROUND

A   Delib provides software as a service applications and associated services.

B   The Client wishes to engage Delib to provide those services in accordance with the terms and conditions of this Agreement.

AGREEMENT

1   Definitions

In this Agreement, unless the contrary intention appears:

Act	means the Data Protection Act 1998.
Agreement	means this Agreement and includes the Agreement Details and any schedules and other attachments.
Agreement Commencement Date	means the date specified in Item 5(a) of the Agreement Details.
Business Day	means a day on which banks are open for business in England & Wales, other than a Saturday, Sunday or public holiday.
Confidential Information	means, in relation to a Party, information that is by its nature confidential, or is communicated to the other Party as confidential, or the other Party knows or ought to know is confidential, and includes:

      (a)   the terms of this Agreement;

      (b)   all information in any way relating to the Party's business, strategies, marketing practices, finances and customers;

      (c)   in the case of Delib, all technical information in relation to the Product; and

      (d)   in the case of the Client, the Client Data.

Client Data	means information concerning Users provided by the Client to Delib or collected by Delib from User interaction with the Service.
Client Materials	means material (including software, documentation and data) provided by the Client to Delib, or created by Delib on behalf of the Client for the sole purpose of performing its obligations under this Agreement, including:

      (a)   text, artwork and logos provided by the Client for the purposes of customisation of the Product; and

      (b)   Client Data,

but does not include Delib Materials.

Data Controller	as set out in section 1(1) of the Act.
Data Processor	as set out in section 1(1) of the Act.

Delib Materials	means any material (including software, documentation and data) provided by Delib to the Client in the course of Delib performing its obligations under this Agreement, which:
	(a) is existing at the Agreement Commencement Date;
	(b) is produced after the Agreement Commencement Date independently of this Agreement; or
	(c) consists of improvements or enhancements to the Product or the Services or any other Delib Materials.
Details	means the information set out in the Agreement Details at the head of this Agreement.
Fees	means the fees specified in Item 7 of the Details and any additional fees charged by Delib in accordance with this Agreement or agreed between the Parties from time to time.
Force Majeure Event	means any event outside of Delib's reasonable control including:
	(a) failure of electrical power, connectivity or any physical infrastructure;
	(b) damage to, or additions, reconfigurations, modifications or other alterations of, any hardware, software or other equipment of the Client or any third party;
	(c) use, operation or installation of the Product, the Services and the Delib Materials other than in accordance with any instructions, specifications or recommendations provided by Delib;
	(d) modifications made by the Client or any third party to the Product, the Services, the Delib Materials or the Website;
	(e) viruses and other malware and third party, and attempted or actual unauthorised third party access or denial of service attacks in connection with the Product, the Services, the Delib Materials or the Website; and
	(f) fire, flood, earthquake, terrorist attack or war.
Intellectual Property	means patents, copyright, registered and unregistered design rights, registered and unregistered trademarks, rights in know-how and confidential information and all other intellectual and industrial property rights (without limitation) all similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.
Personal Data	as set out in section 1(1) of the Act.
Product	means the product identified in Item 1 of the Details.
RPI	means the All Items Retail Prices Index (as published by the Office for National Statistics).
Services	means services identified in clause 3.1 and any other services in relation to the Product agreed between the Parties from time to time.
Subscription Period	a period of 12 months, unless otherwise specified in the Agreement Details.

Term	means the period beginning on the Agreement Start Date and ending in accordance with clause 2.
Terms of Use	means the current terms of use that govern the use of the Product and the Website.
User	means an individual who interacts with the Product through the Website, and may include the Client's officers, employees, contractors, agents and volunteers.
User Generated Content	means text, images or other materials or content generated or contributed by Users.
Website	means the website at the address specified in Item 4 of the Details.

2 Term, Subscription Periods and Renewal Process

2.1 The Term of this Agreement will begin on the Agreement Commencement Date and continue until expiration of the final Subscription Period or earlier termination of the Agreement.

2.2 This Agreement will renew automatically at the end of each Subscription Period unless Delib is notified by the Client of an intention to cancel.

Can we renew quro?

2.3 The Client has until close of business on the final day of the Subscription Period to notify Delib in writing that it does not want to renew.

2.4 Delib will contact the Client's Key Contact(s) in writing no fewer than 60 days prior to the end of the Subscription Period and again at 30 days to the end of the Subscription Period, to provide sufficient notice of the upcoming renewal date and any amendment to the Fees.

Not Applicable

2.5 If no intention to cancel has been received from the Client by 3pm on the final day of the Subscription Period, an invoice for the following Subscription Period will be generated.

2.6 A Client may give Delib notice in writing at any point of its intention to cancel this Agreement for convenience. If the Client gives such notice, the Agreement and the Client's subscription will continue until the end of the current Subscription Period and all Fees due until the end of the current Subscription Period will remain payable.

3 Delib's obligations

3.1 During the Term, Delib will provide the following Services to the Client:

(a) use of the Product, the Delib Materials and the Website in accordance with this Agreement, commencing on the Product Deployment Date;

(b) Additional Services identified in Item 3 of the Details; and

(c) any other Services relating to the Product and agreed in writing from time to time during the Term.

3.2 Delib will use reasonable endeavours to:

(a) ensure that the Services meet the Target Service Levels specified in Schedule 1 to this Agreement but does not warrant that the Services will be uninterrupted or free of errors; and

(b) provide the Client with advance notice in respect of planned unavailability of any part of the Services for maintenance purposes.

4 Client's obligations

The Client must:

(a)   fulfil the responsibilities specified in Item 4 of the Details;

(b)   pay Delib the Fees in accordance with Items 7 and 8 of the Details;

(c)   comply with all applicable laws and obtain all necessary approvals, authorisations, licences and permits as they relate to the Client's use of the Services including for example, but without limitation, marketing, consumer, spam and privacy laws;

(d)   use the Services in connection with the Website and in accordance with this Agreement only;

(e)   not, without Delib's consent, allow third parties (other than Users) to use the Product or Services;

(f)   at its own expense, respond to questions and complaints relating to the Client's or Users' use of or interaction with the Product or Services;

(g)   use reasonable endeavours to resolve support issues before escalating them to Delib, including referring to instructions and guidance that Delib has provided to the Client or made available online;

(h)   ensure security measures are in place to keep the Client's own access to the Services secure;

(i)   immediately notify Delib if it experiences security issues such as attempted or actual unauthorised third party access or denial of service attacks in connection with the Services;

(j)   display on the Website any text concerning privacy, Terms of Use, copyright and other issues requested by Delib; and

(k)   always make the Product available to Users in conjunction with the Client's own privacy policy and subject to the Terms of Use.

5   Data Protection & Privacy

5.1   Each Party warrants that it has registered under the Act and will maintain such registration for the duration of this Agreement.

5.2   For the purposes of this Agreement, the Client will be the Data Controller and owner of all Personal Data it collects through the Website and Delib will be Data Processor of such Personal Data. It is the Client's responsibility to collect all Personal Data using an appropriate privacy policy.

5.3   The Parties acknowledge that Client Data may include Personal Data.

5.4   Each Party must ensure that any processing of Personal Data it uses, obtains or provides to the other Party for the purposes of this Agreement complies with all applicable laws, rules and regulations in England & Wales, including without limitation the Act as amended from time to time.

5.5   Delib warrants that in relation to all Personal Data provided to it by the Client, it will take all reasonable measures to:

(a)   comply with all applicable laws, rules and regulations in England & Wales concerning Personal Data, including without limitation the Act;

(b)   ensure the Personal Data is stored in a manner which will prevent it from being misused, or being accessed by someone other than Delib and the Client, their officers and employees, as required to fulfil its obligations under this Agreement; and

(c)   not permit any Personal Data to be transferred outside of the European Economic Area without the consent of the Client.

5.6 The Client warrants that it shall obtain all consents necessary for Delib to process Personal Data in accordance with this Agreement and the Client shall indemnify Delib against all claims, liabilities, costs and damages that it may incur as a result of the Client breaching this warranty

5.7 Upon request from the other Party, each Party will provide the other Party with reasonable evidence of its compliance with this clause 5.

6 Intellectual Property

6.1 Nothing in this Agreement affects either Party's Intellectual Property rights existing prior to the execution of this Agreement.

6.2 Delib grants to the Client a worldwide non-exclusive licence for the Term to use the Delib Materials to the extent necessary for the Client to obtain the benefit of the Services as set out in this Agreement.

6.3 The Client grants to Delib a worldwide non-exclusive licence for the Term to use, reproduce and, where appropriate, publish any Client Materials and Client Data in connection with the Agreement, solely to the extent necessary for Delib to perform its obligations under this Agreement.

6.4 Subject to clause 6.5, Delib owns all Intellectual Property developed under or incidental to the Services provided during the Term, including any additions or improvements to the Product and the Delib Materials, even where those additions or improvements arise from feedback or suggestions from the Client. This Intellectual Property will vest in Delib on its creation.

6.5 The Client owns all Intellectual Property in all Client Materials and Client Data, whether created before or after the Agreement Commencement Date, and Intellectual Property in all Client Materials and Client Data will vest in the Client on its creation.

6.6 Each Party assigns to the other Party all Intellectual Property necessary to confirm clauses 6.4 and 6.5 and each Party will execute and deliver to the other Party upon request any documents reasonably necessary to confirm and perfect those rights.

6.7 The Client must not amend, alter, copy, distribute, make a derivative work of or otherwise deal with any part of the Delib Materials or the Product in a way inconsistent with Delib's rights as owner of the Intellectual Property in the Delib Materials and the Product.

6.8 If any claim is brought against Delib that the Client Materials and/or User Generated Content, or its use by Delib, infringes an intellectual property right of a third party, the Client will at its own expense:

(a) settle or defend the claim; and

(b) pay any damages or costs finally awarded against Delib as the result of the claim; and

(c) fully indemnify Delib in respect of all costs, losses, damages and expenses incurred by Delib in respect of such infringement.

6.9 If any claim is brought against the Client that the Product, or its proper use by the Client, infringes an intellectual property right of a third party, Delib will at its own expense:

(a) settle or defend the claim; and

(b) pay any damages or costs finally awarded against the Client as the result of the claim; and

(c) fully indemnify the Client in respect of all costs, losses, damages and expenses incurred by the Client in respect of such infringement.

This indemnity will not apply to the extent that any such claim arises out of the inclusion of Client Materials and/or User Generated Content in the Product/Website, any changes

made to the Product/Website without Delib's consent or the use of the Product in combination with any other equipment or software not approved by Delib.

6.10 The indemnities in clauses 6.8 and 6.9 are conditional on the indemnified party:

    (a)   communicating such claim to the indemnifying party as soon as is reasonably practicable;

    (b)   allowing the indemnifying party to have full control over the defence of such claim; and

    (c)   giving the indemnifying party such reasonable co-operation as it requires to defend the claim; and

    (d)   not making any settlement or admission without the consent of the indemnifying party.

7   Warranties and liability

7.1 Except for those warranties set out in this Agreement, or implied by law and unable to be lawfully excluded, Delib gives no warranties or guarantees and accepts no liability concerning the Services. Any conditions, rights, warranties or guarantees implied by law are expressly excluded to the extent permitted by law.

7.2 Subject to clause 7.3, the Client agrees that:

    (a)   Delib will not be liable to the Client for:

        (i)   any loss, damage, injuries, actions, claims, costs or expenses arising out of the use of or reliance on or purchase of the Services or failure of the Services to provide expected benefits, or inability to use the Services, or use of the Product by Users; or

    (b)   the following types of loss whether direct or indirect:

        (i)   loss of profit;

        (ii)   loss of goodwill;

        (iii)   loss of business;

        (iv)   loss of business opportunity;

        (v)   loss of anticipated saving;

        (vi)   loss of corruption of data or information;

        (vii)   any special, indirect or consequential damage or loss suffered by the other party,

    arising or caused in any way whatsoever, including as a result of any Force Majeure Event and whether or not foreseeable; and

    (c)   Delib's liability to the Client for all loss, damage, injuries, actions, claims, costs or expenses arising out of this Agreement and caused in any way whatsoever, including negligence or failure to comply with this Agreement, and not otherwise excluded or limited, will be limited in the aggregate to the lesser of:

        (i)   the total Fees paid by the Client to Delib; and

        (ii)   the total Fees paid by the Client to Delib over the previous 12 months,

    under this Agreement at the time the alleged cause of the liability arises.

7.3 The Client warrants to Delib that it recognises that the product is delivered to a fixed specification and it is up to the Client to ensure the specification will deliver what the Client requires. Delib will have no liability for the Client's unfulfilled expectations.

7.4 The limitations of Delib's liability under this Agreement do not apply:

    (a) to the extent any law provides that any conditions, rights, warranties, guarantees or liabilities are unable to be excluded. Delib's liability under any such conditions, warranties, guarantees or liabilities is limited to, at Delib's option, supplying the Services again or paying the cost of having those Services supplied again; and

    (b) to any liability for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation.

7.5 The Client must indemnify Delib, its officer and employees (**those indemnified**) from and against all loss, damage, injuries, penalties, actions, claims, costs or expenses (including all reasonable settlements and legal costs) that may be brought against those indemnified or which those indemnified may suffer or incur arising directly or indirectly out of:

    (a) any breach of this Agreement or the Terms of Use by the Client;

    (b) any wilful, unlawful or negligent act or omission of the Client, its officers, employees or contractors, under or in connection with this Agreement;

    (c) any User interaction with the Product and the Website.

8 Variations to Products and Services

8.1 Delib may make reasonable changes to the Product, the Services, the Delib Materials and the Website from time to time, including by adding, updating, changing or removing features. Delib will notify the Client of any material changes.

8.2 When Delib provides modified Delib Materials to the Client, the Client must replace (or permit Delib to replace) the Delib Materials being used by the Client as soon as reasonably possible. The functionality of the Product, the Services and the Delib Materials may be affected until the Delib Material is replaced.

8.3 Other than as set out in this clause 8, this Agreement may only be altered in writing signed by each Party.

9 Fees and Payment

9.1 The Client will pay Delib the Fees.

9.2 Invoices shall be submitted in accordance with the invoicing procedure specified in the Agreement. Payment will be made within 30 days of the date of the invoice by BACS.

9.3 Any amount payable under this Agreement does not include VAT unless otherwise stated.

9.4 The Client shall, on receipt of a valid VAT invoice from Delib, pay to Delib such additional amounts in respect of VAT as are chargeable on a supply of the Services.

9.5 If any party defaults in the payment when due of any sum payable under this Agreement (whether payable by agreement or an order of a court or otherwise), the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of actual payment at a rate of 4% above the base rate from time to time of Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

10 Fee increases

10.1 Delib will notify the Client in writing of any Fee increase coming into effect in the following Subscription Period no fewer than 60 days prior to the end of any Subscription Period.

11 Relationship management

11.1 Client's Authorised Representative

(a) The Client nominates and authorises the person identified in Item 1 of the Details (the Key Contact) as its representative in relation to the management of this Agreement.

(b) Subject to (c) below, Delib may take directions, instructions or requests from the Client's Authorised Representative, or any other person held out by the Client or its Authorised Representative as being authorised to issue such directions, instructions or requests, as if they were from the Client.

(c) Delib will not take directions, requests or instructions from, nor will Delib offer support to, any organisation or person outside of the Client.

11.2 Cooperation

Each Party must:

(a) cooperate and act reasonably to assist the other Party in relation to this Agreement;

(b) promptly provide each other with all information reasonably necessary for the Parties to carry out their obligations under this Agreement; and

(c) inform the other Party of any reasonable concerns about the legality of the Product, the Services and the Delib Materials and the operation of the Website as it relates to the Client's use of the Product, the Services and the Delib Materials and take any action reasonably necessary to address any such concerns within its control (provided that Delib may charge the Client for any such actions with the Client's prior agreement).

11.3 Disputes

(a) In the event of any dispute arising out of or relating to this Agreement, each party agrees not to commence legal proceedings without first attempting in good faith to resolve the dispute amicably and speedily in accordance with the dispute resolution procedure set out below.

(b) Any such dispute shall be referred in the first instance to the main individuals responsible for administering this Agreement within the Client's and Delib's businesses respectively.

(c) If the dispute is not resolved in accordance with clause 11.3(b) above, it shall be referred at the written consent of either party to the respective Managing Director (or equivalent) of the Client and Delib. The Managing Directors may each nominate a deputy to deal with the matter on his/her behalf.

(d) If the dispute is not resolved at this stage within 14 days of being referred to the Managing Directors (or such longer period as the parties may agree), the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

(e) If mediation is unsuccessful, this dispute resolution procedure shall be considered at an end as regards the dispute in question.

(f)   This dispute resolution procedure shall not prevent a party to the Agreement from taking injunctive action.

12 Insurance

12.1 Delib will during the Term at Delib's expense, obtain and keep in full force and effect appropriate insurances.

13 Confidentiality

13.1 Each Party (the **Recipient**) must keep the Confidential Information of the other Party (the **Disclosing Party**) confidential and use that Confidential Information only for the purpose of performing this Agreement.

13.2 The Recipient may disclose the Confidential Information only to the Recipient's officers, employees, contractors and agents who have a need to know for purposes of performing this Agreement and who are aware that the information must be kept confidential.

13.3 If this Agreement expires or is terminated for any reason, each Recipient must, at the Disclosing Party's request, return to the Disclosing Party or destroy (and provide evidence of the destruction of) all information provided by the Disclosing Party containing the Confidential Information, together with all copies.

13.4 Clauses 13.1 to 13.3 do not apply to the extent the Confidential Information:

(a)   is in the public domain other than as a result of a breach of this Agreement;

(b)   is independently developed by the Recipient;

(c)   is disclosed to the Recipient by a third party having the right to do so;

(d)   is required by law or any securities exchange or regulatory or governmental body to which the Recipient is subject wherever situated to be disclosed: or

(e)   the Recipient considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on terms protecting the information.

13.5 With prior agreement from the Client, Delib may identify the Client and the Website, and provide a brief description of the application of the Product and the Services as an example or case study for marketing purposes.

14 Security

14.1 In this clause 14:

Access Credential	means an authentication method, which may be a user name, password, a form of cryptosystem (e.g. a network based security layer, virtual private network, public key infrastructure or similar), a physical method or a biometric or other method.
Delib System	means the Product, the Services, the Delib Materials, the Website, and any server or other information technology system owned or used by Delib or its contractors.

14.2 Delib may provide to the Client access (including remote access) to a Delib System. Such access may include provision of an Access Credential.

14.3 In relation to each Delib System and Access Credential, the Client must:

(a)   access and use that Delib System and Access Credential only for the purposes of this Agreement, only in a manner authorised under the Agreement and not in any other way;

(b)   not assist any other person to use a Delib System or Access Credential in an unlawful or unauthorised way;

(c)   use reasonable security measures to prevent unauthorised access or use of a Delib System or Access Credential by a person;

(d)   inform Delib as soon as reasonably possible upon becoming aware of any unauthorised access to or use of a Delib System or Access Credential and do everything possible to minimise and mitigate the effect of such unauthorised access or use, including preserving evidence and informing appropriate authorities;

(e)   inform Delib as soon as reasonably possible of any security vulnerability, weakness or threat it discovers in a Delib System (or connection to or from it);

(f)   not, and ensure that each of its personnel do not:

    (i)   disclose or provide an Access Credential to any other person; or

    (ii)   load into, download to or from, transmit to or from, post to or from or otherwise make available or introduce to in respect of a Delib System any viruses or other malicious code or material that:

        A.   violates or infringes any right of another person (including their Intellectual Property, privacy and publicity rights);

        B.   is unlawful, threatening, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person; or

        C.   breaches, or would cause Delib to breach any applicable law;

(g)   not use a Delib System in a way that harms or interferes with the use of Delib System by Delib or another person;

(h)   not use a Delib System as a destination linked from any unsolicited bulk messages or unsolicited commercial messages; and

(i)   not use any unauthorised third party software or service to access a Delib System.

14.4   The Client will be deemed to be responsible for every access to or use of a Delib System that is made with an Access Credential provided to the Client, even if such access or use was not made by the Client or its personnel.

15   User Generated Content

15.1   Where User Generated Content is published or otherwise made available via the Product, the Client is responsible for moderating the User Generated Content. Delib shall have no liability to the Client or a third party in relation to User Generated Content.

15.2   Delib may (but is not obliged to) access the Product in use by the Client to remove any User Generated Content for any reason if Delib believes that there is a problem with any such content, or if Delib believes that any moderation policy has been contravened.

16   Force Majeure

16.1   If a Force Majeure Event prevents Delib from performing any obligation under this Agreement, Delib will give notice to the Client (by email to the Client's Authorised Representative) as soon as reasonably practical of the Force Majeure Event, the anticipated duration of any delays arising from the Force Majeure Event, the obligation

Delib is prevented or likely to be prevented from performing, and Delib's plans to work around or minimise the impact of the Force Majeure Event.

16.2 Delib will not be liable or in breach of this Agreement for failing to perform any obligation that it is unable to perform due to a Force Majeure Event. The due date for any affected obligation will be deemed to be extended by the duration of the Force Majeure Event.

16.3 Each Party shall make all reasonable efforts to minimise the effects of the Force Majeure Event.

17 Termination and suspension

17.1 The Client may suspend its use of the Services under this Agreement for any reason at any time, provided that the Client must:

    (a)   immediately notify Delib in writing;

    (b)   immediately cease to use the Product, the Services and the Delib Materials; and

    (c)   continue to comply with the remainder of its obligations under this Agreement, including payment of Fees, until the Agreement expires or is terminated.

17.2 Delib may suspend performance of its obligations under clause 3 at any time if it believes:

    (a)   the Client is in breach of this Agreement or the Terms of Use or is acting illegally or by its act or omission placing Delib at risk of acting illegally in connection with the Product or Services;

    (b)   the Client's use of the Services, or use by Users, could be in breach of the Terms or Use or disrupt the Product or Services or another customer's use of the Product or Services; or

    (c)   Delib or the Client experience security issues such as attempted or actual unauthorised third party access or denial of service attacks in connection with the Product or the Services.

If Delib exercises its rights under this clause 17.2, Delib must immediately notify the Client of its reasons and both Parties will use reasonable endeavours to limit the effect and duration of the suspension.

17.3 Either party may terminate this Agreement immediately by notice in writing to the other party if an Event of Default occurs in relation to the other party.

17.4 An **Event of Default** occurs in the case of either party, when:

    (i)   the party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction, or;

    (ii)   the party commits a breach of its obligations under this Agreement which:

        (A)   if capable of being remedied, is not remedied within 20 Business Days of notice from the other party, specifying the breach and requiring it to be remedied; or

        (B)   is a material breach and is not capable of remedy; and

17.5 Termination of this Agreement does not affect any accrued rights or remedies of either party.

17.6 On termination of this Agreement:

    (a)   the Client must, where appropriate, export any Client Materials required for Client records;

    (b)   Delib will cease to be under any obligation to provide the Services to the Customer; and

    (c)   Delib will put all Client Data beyond use.

17.7 Termination shall not affect the rights and obligations of the parties which expressly or by implication are intended to continue after termination of the Agreement.

18 Notices

18.1 A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

    (a)   in writing, in English and signed by a person duly authorised by the sender; and

    (b)   hand delivered, sent by correctly addressed prepaid 1st class post, sent by email to the recipient's address specified in the Details, as varied by any Notice given by the recipient to the sender.

18.2 A Notice given in accordance with clause 18.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

    (a)   if hand delivered, on delivery;

    (b)   if sent by prepaid 1st class post, on the second Business Day after the date of posting (if posted to or from a place within the United Kingdom);

    (c)   if sent by email, within one hour of sending during business hours of 9.00am to 5.00pm on a Business Day,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19 General

19.1 The Client must not assign any of its obligations or rights under this Agreement without Delib's prior written consent. Delib may assign this Agreement to another party and, if so, the Client will execute any transfer or novation of the Agreement to the new party upon request from Delib.

19.2 Each party must pay its own costs of negotiating, preparing and executing this Agreement.

19.3 If a provision of this Agreement is invalid or unenforceable in a jurisdiction, it shall be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

19.4 This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all earlier conduct, representations and prior agreements and understandings in connection with its subject matter

19.5 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

19.6 The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right, to claim damages for breach of that

obligation or at any other time to require performance of that or any other obligation under this Agreement.

19.7 Delib may use subcontractors or agents to provide the Services or perform any of its duties or exercise any of its rights under this Agreement,

19.8 This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

19.9 Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

19.10This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

20   Interpretation

In this Agreement, unless the contrary intention appears:

(a)   headings are for ease of reference only and do not affect the meaning of this Agreement and do not form part of the clause;

(b)   the singular includes the plural and vice versa;

(c)   other grammatical forms of defined words or expressions have corresponding meanings;

(d)   mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included;

(e)   a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;

(f)   a reference to "£", "GBP" or "pound sterling" is a reference to the currency of the United Kingdom;

(g)   a reference to a Party includes its successors and permitted assigns and if more than one, includes those persons jointly and each of them severally, their respective executors administrators and assigns;

(h)   words importing the whole of the matter or thing include a part of the matter or thing;

(i)   if the day on which anything is required to be done is not a Business Day, that thing shall be done on the next Business Day; and

(j)   if an act which is done or required to be done under this Agreement is done after 5:00pm on that day, it will be deemed to have been done on the following day.

(k)   a reference to a statute or statutory provision includes:

(i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;

(ii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.

21   Exclusion of third party rights

Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

SCHEDULE 1 – SERVICE LEVELS

(Clause 3.2)

Contact to report service failure:	Via email: support@delib.net Via online: https://delib.zendesk.com Via phone: 0845 638 1848

Definitions:	**Uptime** means time when the Product is available to the Client and the general public, or any other time that is not excluded from the definition of Downtime. The Product's availability is determined by the Product monitoring system. **Downtime** means time other than Uptime, i.e. when the Product becomes unavailable to the Client and the general public other than because of: (a)　failure to meet browser/platform requirements; (b)　failure by the Client to comply with this Agreement or the Terms of Use; (c)　Delib exercising its rights to suspend the Product under this Agreement; (d)　planned maintenance notified by Delib in advance; (e)　performance of Services by Delib under this Agreement or agreed under a separate Agreement, including testing and quality assurance; (f)　user-side connectivity issues; or (g)　· a Force Majeure Event. Unavailability due to planned maintenance notified by Delib in advance shall not count as Downtime for the purposes of this Agreement. The Client's Authorised Representative will be notified by email at least 24 hours in advance of any planned maintenance.

Target service availability		
Hours	24 hours, seven days per week.
Target availability	99.95% (maximum 21.5 minutes of Downtime per month)
Measurement period for availability	Calendar months
Failure to meet target availability	If Downtime exceeds the target limit of 21.5 minutes in a calendar month, Delib will provide the Client with a service credit equal to one day's Fees on a pro rata basis (exclusive of VAT, and exclusive of any excess bandwidth or storage charges that have been negotiated) for each full completed hour of downtime. The maximum service credit available in respect of any one month shall not exceed one month's Fees.

Target response times		
Incident level definitions	Critical Error	Non-availability of the Product, any reproducible error, which prevents a user from entering or submitting data, or any error that causes unavoidable or unexpected data loss.
	Non-critical Error	Any error which does not fit the description of a critical error.
Target response times	*Level*	*Response*
	Critical Error	(a) Delib will perform a fault diagnostic on any and all Critical Errors as soon as possible - 24 hours per day, 7 days per week, within a maximum response time of 2 hours.
		(b) Delib aims to resolve Critical Errors to the Product which do not include any data loss within a maximum of one Business Day.
		(c) Delib aims to resolve Critical Errors to the Product which include data-loss within a maximum of two Business Days.
		(d) Delib aims to resolve Critical Errors to the hardware or infrastructure within a maximum of 7 days. (This time includes up to 5 days to rebuild from back ups, and 2 days to correct the Product error).
	Non-critical Error	(a) Delib will perform a fault diagnostic on any and all Non-critical Errors within a maximum response time of two working days - Monday to Friday between the hours of 9am and 6.30pm Greenwich Mean Time.
		(b) Delib aims to resolve Non-critical Errors to the Product within 2 working days of the completion of the fault diagnostic. In some circumstances a fix may require a major Product update which may take longer to schedule in.
Fault diagnostics and workarounds	When the fault diagnostic is complete, Delib will provide an estimate of when the fix will be rolled out to Client sites. Where possible, a workaround will be provided until the permanent fix is available.	

Notes

1. Downtime

The Client will be issued with a Downtime notification every time the Product becomes unavailable and a Downtime report once the cause of the Downtime or non-Downtime unavailability has been established.

2. Monitoring

(a)   Automated monitoring is provided under this Agreement. Automated monitoring notifies Delib of the non-availability of the web Product after a period of 5 minutes.

(b)   Automated monitoring cannot verify that the entire Product is working as expected.

(c)   If the hosting environment is not available, Delib's Disaster Recovery Plan is put into effect.

3. Application Maintenance

(a)   Maintenance time is required to resolve errors within the Product.

(b)   Errors are reported in one of two ways: by alert from Delib's monitoring system or by notification from the Client.

(c)   Once an error has been reported, the error is investigated and classified as a Critical Error or Non-Critical Error.

4. Testing & Quality Assurance (QA)

All changes to the Website, including updates and maintenance, must be followed by rigorous testing and quality assurance. Full test runs take at least half a day, whatever the size of the amendment.