



SOFTWARE AS A SERVICE AGREEMENT

PARTIES:

DELIB	DELIB LIMITED incorporated and registered in England and Wales with company number 05158056 and whose registered office is Orchard Street Business Centre, 13-14 Orchard Street, Bristol BS1 5EH
THE CLIENT	NHS ENGLAND whose principal place of business is Wellington House, 133-155 Waterloo Road, London SE1 8UG

KEY TERMS:

Item	Description	Details
1.	Product	[REDACTED]
2.	Product Specifications	[REDACTED] Access to the pages feature at no additional cost
3.	Services	Continuation of <a href="https://www.engage.england.nhs.uk/">https://www.engage.england.nhs.uk/</a>
4.	Client responsibilities	<ul style="list-style-type: none"><li>• Please sign and date this agreement and return it to Delib at least 30 days prior to the Contract Commencement Date (below)</li><li>• Please review and update Schedule 2 of this agreement</li><li>• The obligations detailed in clause 4 of the Terms and Conditions.</li></ul>
5.	Term	(a) <b>Contract Commencement Date:</b> 1 <sup>st</sup> October 2024 (b) <b>Product Deployment Date:</b> N/A – site already deployed (c) <b>Subscription Period:</b> 12 months from the Commencement Date
6.	Key Client Contact	Name: [REDACTED] Position: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
7.	Fees	[REDACTED] <div>TOTAL:</div> <div>All amounts are exclusive of VAT.</div>
8.	Payment method	Payment must be made within 30 days of the date on the invoice, by BACS.
9.	Purchase Order	Where applicable, please provide a Purchase Order number for us to invoice against: [REDACTED]

Entered into by the parties as an agreement on the dates below:

Signed for and on behalf of:	DELIB LIMITED
By its authorised representative:	
Name:	
Title:	
Date:	
Signed for and on behalf of:	NHS England
By its authorised representative:	
Name:	
Title:	
Date:	

## TERMS AND CONDITIONS

### 1 Definitions

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In this Agreement, in addition to the definitions set out in the Key Terms above, unless the contrary intention appears:

<b>Administrative User</b>	means an employee or contractor of the Client who is authorised to administer the Client's use of the Services.
<b>Agreement</b>	means this Agreement and includes the Key Terms, these Terms and Conditions, and any schedules and other attachments.
<b>Applicable Data Protection Laws</b>	means: <ol style="list-style-type: none"> <li>(a) To the extent the UK GDPR applies, the law of the United Kingdom or a part of the United Kingdom which relates to the protection of personal data.</li> <li>(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Delib is subject, which relates to the protection of personal data.</li> </ol>
<b>Applicable Laws</b>	means: <ol style="list-style-type: none"> <li>(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.</li> <li>(b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which Delib is subject.</li> </ol>
<b>Business Day</b>	means a day on which banks are open for business in England & Wales, other than a Saturday, Sunday or public holiday.
<b>Confidential Information</b>	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: <ol style="list-style-type: none"> <li>(a) the terms of this Agreement;</li> <li>(b) all information in any way relating to the Party's business, strategies, marketing practices, finances and customers;</li> <li>(c) in the case of Delib, all technical information in relation to the Product (including the Product Specifications); and</li> <li>(d) in the case of the Client, the Client Data.</li> </ol>
<b>Client Data</b>	means information concerning Users provided by the Client to Delib or collected by Delib from User interaction with the Service and includes any text, graphic, image, audio and/or visual material, software, data, database content or other multimedia content, information and material but excluding "Personal Data".
<b>Client Personal Data</b>	means any personal data which Delib processes in connection with this agreement, in the capacity of a processor on behalf of the Client.
<b>Client Materials</b>	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: <ol style="list-style-type: none"> <li>(a) text, artwork and logos provided by the Client for the purposes of customisation of the Product; and</li> <li>(b) Client Data,</li> </ol> but does not include Delib Materials.
<b>Delib Materials</b>	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.

<b>End User</b>	means an individual who interacts with the Product through the Website.
<b>EU GDPR</b>	means the General Data Protection Regulation ((EU) 2016/679).
<b>Fees</b>	means the fees specified in the Key Terms and any additional fees charged by Delib in accordance with this Agreement or agreed between the Parties from time to time.
<b>Force Majeure Event</b>	means any event outside of a Party's reasonable control including: <ul style="list-style-type: none"> <li>(a) failure of electrical power, connectivity or any physical infrastructure;</li> <li>(b) damage to, or additions, reconfigurations, modifications or other alterations of, any hardware, software or other equipment of the Client or any third party;</li> <li>(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;</li> <li>(d) modifications made by the Client or any third party to the Product, the Services, the Delib Materials or the Website;</li> <li>(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</li> <li>(f) fire, flood, earthquake, terrorist attack or war.</li> </ul>
<b>Intellectual Property</b>	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.
<b>Schedule 2</b>	Sets out the purposes for which the Client Personal Data is processed in accordance with this Agreement.
<b>Services</b>	means services identified in clause 3.1 and any other services in relation to the Product agreed between the Parties from time to time.
<b>UK GDPR</b>	has the meaning given to it in the Data Protection Act 2018.
<b>User</b>	means an Administrative User or End User.
<b>User Generated Content</b>	means text, images or other materials or content generated or contributed by Users.
<b>Website</b>	means the website via which the Product is accessed, as specified in the Key Terms or otherwise at the address nominated by the Parties for that purpose.

## 2 Term

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- 2.1 The Term of this Agreement will begin on the Commencement Date and, unless terminated earlier in accordance with these Terms and Conditions, shall continue for the subscription period. Thereafter the Agreement shall automatically renew for successive 12 month periods (each an additional subscription period), unless terminated in accordance with these terms.

- 2.2 Delib will contact the Client's Key Contact(s) in writing no fewer than 60 days prior to the end of the then current 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.
- 2.3 If no notice to terminate has been received from the Client 7 days before the end of the current subscription period, Delib will issue an invoice for payment by the Client for the next subscription period.

### **3 Delib's Obligations**

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- 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) the Services (if any) specified in the Key Terms or otherwise agreed by the Parties; 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 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.
- 3.3 In performing its obligations under this Agreement Delib shall comply with all Applicable Laws, statutes and regulations from time to time in force.

### **4 Client's Obligations**

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- 4.1 The Client must:
- (a) fulfil the responsibilities specified in the Key Terms;
  - (b) pay Delib the Fees in accordance with this Agreement;
  - (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 End Users) to use the Product or Services;
  - (f) at its own expense, respond to questions and complaints relating to the Client's or End 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;
  - (k) be responsible for End Users' access to and use of the Product and for all User Generated Content; and
  - (l) always make the Product available to End Users in conjunction with the Client's own privacy policy.

## 5 Data Protection & Privacy

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- 5.1 For the purposes of this clause 5, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- (a) the Client will be the controller and owner of all personal data comprised in the Client Personal Data set out in Schedule 2 Part 1; and
  - (b) Delib will be data processor of such personal data (Client Personal Data) set out in Schedule 2 Part 2.

It is the Client's responsibility to collect, transfer and process all personal data in accordance with the Applicable Data Protection Laws, including with any necessary consents, permissions, or other lawful basis, and subject to an appropriate privacy policy.

- 5.4 Should the determination in clause 5.3 change, then each party shall work together in good faith to make any changes which are necessary to this clause 5 or the related schedules.
- 5.5 **Instructions.** Delib shall process the Client Personal Data only to the extent, and in such a manner, as is necessary for the purposes of the Product and Services and in accordance with:-
- (a) the Client's written instructions from time to time; and
  - (b) shall not process the Client Personal Data for any other purpose.
- 5.6 If Delib believes that any instruction received by it from the Client is likely to infringe the Applicable Data Protection Laws it shall promptly inform the Client and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 5.7 In relation to the Client Personal Data, Schedule 2 sets out the scope, nature and purpose of processing by Delib, the duration of the processing and the types of personal data and categories of data subject.
- 5.8 By entering into this agreement, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to Delib and or the lawful collection of the same by Delib for the duration and purposes of this agreement.
- 5.9 **Security.** Taking into account the state of technical development and the nature of processing, Delib shall ensure that it has in place appropriate technical and organisational measures to protect the Client Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure, access or processing to ensure a level of security appropriate to the risk and harm that might result from such accidental, unauthorised or unlawful destruction, loss, alteration, disclosure, access or processing of the Client Personal Data.
- 5.10 **Sub-processing.** The Client hereby provides its prior, general authorisation for Delib to appoint processors to process the Client Personal Data, provided that Delib shall:
- (i) ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws and are consistent with materially the same obligations imposed on Delib in this clause 5; and
  - (ii) remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Delib.
- 5.11 Delib uses the sub-processors detailed at: <https://help.delib.net/article/335-delib-sub-processors> to assist with delivery of the Services. Delib shall notify the Client of any changes to these sub-processors.
- 5.12 **Personnel.** Delib shall ensure that all employees, agents or other persons who have access to and/or process Client Personal Data:
- (a) are informed of the confidential nature of the Client Personal Data and are subject to a binding written contractual obligation to keep the Client Personal Data confidential;
  - (b) have undertaken training relating to handling personal data;

- (c) are aware of their personal duties and obligations under the Applicable Data Protection Laws; and
  - (d) shall only have access to such part or parts of the Client Personal Data as is strictly necessary for performance of that person's duties.
- 5.13 **International transfers.** Delib provides some elements of the Services via its group companies which are based outside of the EEA. Appropriate safeguards are in place between Delib and its group companies to allow lawful transfer of data to take place. Other than this, Delib shall not transfer the Client Personal Data outside the European Economic Area without the prior consent of the Client.
- 5.14 **Breach.** Delib shall promptly inform the Client if any Client Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable.
- 5.15 **Records.** Delib shall, in accordance with the Applicable Data Protection Laws, make available to the Client such information that is in its possession or control as is necessary to demonstrate Delib's compliance with the obligations placed on it under this clause 5 and to demonstrate compliance with the Applicable Data Protection Laws.
- 5.16 **Assistance.** Delib shall, at the Client's cost:
- (a) promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as the Client may require in relation to the fulfilment of the Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under Applicable Data Protection Laws); and
  - (b) provide such information, co-operation and other assistance to the Client as the Client reasonably requires (taking into account the nature of processing and the information available to Delib) to ensure compliance with the Client's obligations under Applicable Data Protection Laws.
- 5.17 **Deletion/return.** Within 14 Business Days of the agreed date of Product closedown, at the Client's cost and the Client's option, Delib shall either return all of the Client Personal Data to the Client or securely dispose of the Client Personal Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Delib to retain such Client Personal Data.
- 5.18 The Client warrants and undertakes that it shall obtain all consents necessary for Delib to process Client 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

## 6 Intellectual Property

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- 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 To the extent that the Intellectual Property referred to in clauses 6.4 or 6.5 vest in the incorrect Party, 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**

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- 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 provides the Product and Services as a digital tool to assist the Client in achieving its objectives and facilitate the transfer and collation of information, but Delib does not guarantee the results obtained via use of the Product and Service and accordingly shall not be liable to the Client for its reliance on the outputs of the Product and Services or the use of the Product by Users;
  - (b) Delib shall not be liable to the Client for 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 or 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 an amount equal to:

- (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 acknowledges and agrees that the Product is delivered to a fixed specification and it is up to the Client to ensure that the specification will meet the Client's requirements. Delib does not warrant that the Product will be fit for any particular purpose and 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 shall indemnify Delib, its officer and employees 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 by the Client; or
  - (b) any wilful, unlawful or negligent act or omission of the Client, its officers, employees or contractors, under or in connection with this Agreement.

## **8 Variations to Products and Services**

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- 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**

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- 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**

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Delib may increase the Fees payable on each renewal of the Subscription Period. 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 the current Subscription Period.

## 11 Relationship Management

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### 11.1 Client's Authorised Representative

- (a) The Client nominates and authorises the Key Client Contact to act 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 Key Client Contact, or any other person held out by the Client or its Key Client Contact 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 Co-operation

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

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

## 13 Confidentiality

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- 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 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitutes Delib's Confidential Information.

- 13.4 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.
- 13.5 Clauses 13.1 to 13.4 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.
- 13.6 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

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- 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 Users 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 and ensure that Users do 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 and ensure that Users do not use a Delib System as a destination linked from any unsolicited bulk messages or unsolicited commercial messages; and
  - (i) not and ensure that Users do 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**

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- 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.
- 15.3 The Client will indemnify Delib in respect of all costs, losses, damages and expenses incurred by Delib in relation to User Generated Content.

## **16 Force Majeure**

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- 16.1 If a Force Majeure Event prevents a Party from performing any obligation under this Agreement, the Party affected by the Force Majeure Event will give notice to the other Party as soon as reasonably practical of the Force Majeure Event, the anticipated duration of any delays arising from the Force Majeure Event, the obligation the affected Party is prevented or likely to be prevented from performing, and affected Party's plans to work around or minimise the impact of the Force Majeure Event.
- 16.2 A Party 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**

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- 17.1 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 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 End Users, could 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 17.1, 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.
- 17.2 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.
- 17.3 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 material breach of its obligations under this Agreement which is irremediable or, 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.

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

17.5 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 Product and/or Services to the Client; and
- (c) Delib will put all Client Data beyond use.

17.6 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

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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

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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 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.

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

## **20 Interpretation**

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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) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included;
- (d) 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;
- (e) 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;
- (f) words importing the whole of the matter or thing include a part of the matter or thing;
- (g) 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; and
  - (ii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.

**SCHEDULE 1 – SERVICE LEVELS**

<b>Contact to report service failure:</b>	[REDACTED] [REDACTED] [REDACTED]
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<b>Definitions:</b>	<p><b>Downtime</b> means time other than Uptime, i.e. when the Product becomes unavailable to the Client and Users, provided that Downtime does not include any inability to access or use the Product because of:</p> <ul style="list-style-type: none"> <li>(a) failure to meet browser/platform requirements;</li> <li>(b) failure by the Client to comply with this Agreement;</li> <li>(c) Delib exercising its rights to suspend the Product under this Agreement;</li> <li>(d) planned maintenance notified by Delib in advance;</li> <li>(e) performance of Services by Delib under this Agreement or agreed under a separate Agreement, including testing and quality assurance;</li> <li>(f) User-side connectivity issues; or</li> <li>(g) a Force Majeure Event.</li> </ul> <p><b>Maintenance</b> means the maintenance services to be provided by Delib including analysis, coding, testing and release error corrections. Maintenance shall be within reasonable time limits, as determined by Delib, and does not include requests for basic product training or technical consulting.</p> <p><b>Unavailability</b> means due to planned maintenance notified by Delib in advance shall not count as Downtime for the purposes of this Agreement.</p> <p><b>Uptime</b> means time when the Product is available to the Customer and Users, as determined by Delib's Product monitoring system.</p>
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<b>Target service availability</b>	
<b>Hours</b>	24 hours, seven days per week.
<b>Target availability</b>	[REDACTED]
<b>Measurement period for availability</b>	Calendar months
<b>Failure to meet target availability</b>	[REDACTED] [REDACTED]

Target response times		
<b>Incident level definitions</b>	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.
<b>Target response times</b>	<i>Level</i>	<i>Response</i>
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
<b>Fault diagnostics and workarounds</b>	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
<p>When the fault diagnostic is complete, Delib will provide an estimate of when the fix will be rolled out to Client sites.</p> <p>Where possible, a workaround will be provided until the permanent fix is available.</p>		

Maintenance	
<b>Application</b>	<p>(a) Maintenance time is required to resolve errors within the Product.</p> <p>(b) Errors are reported in one of two ways: by alert from Delib's monitoring system or by notification from the Customer.</p> <p>(c) Once an error has been reported, the error is investigated and classified as a Critical Error or Non-Critical Error.</p> <p>(d) Where maintenance cannot be completed within the defined maintenance period, the Customer will be notified in advance in accordance with this Schedule 1 Service Level Agreement.</p>
	<p>(a) The Customer 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.</p> <p>(b) The Key Customer Contact will be notified by email at least 24 hours in advance of any planned maintenance.</p>



**Monitoring**

<b>Application</b>	<ul style="list-style-type: none"><li>(a) Automated monitoring is provided under this Agreement. Automated monitoring notifies Delib of the non-availability of the web Product after a period of [REDACTED].</li><li>(b) Automated monitoring cannot verify that the entire Product is working as expected.</li><li>(c) If the hosting environment is not available, Delib's Disaster Recovery Plan is put into effect.</li></ul>
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**Testing & Quality Assurance (QA)**

<b>Application</b>	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.
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## SCHEDULE 2: PARTICULARS OF THE PROCESSING

### Part 1: Particulars of Processing

#### 1.1 Scope

The Client is a [Note: Please edit or delete any examples given below that are not applicable and/or add any relevant additional details]

- National government
- Central government department/departmental body
- Non-departmental public body
- Government owned company/agency
- Local government authority/council/body
- Regulatory body

#### 1.2 Delib is an IT, digital, technology business providing technology products or services, cloud and support services or software licensing.

#### 1.3 Nature

- (a) The personal data to be processed by Delib will be subject to the following basic processing activities:
- Receive data, including collection, accessing, retrieval, recording, and data entry
  - Hold data, including storage, organisation and structuring
  - Protect data from unauthorised access
  - Return data to the data controller or data subject
  - Erase data, including destruction and deletion

#### 1.4 Purpose of the Processing

- (a) The Client is using the personal data which is being processed for the following purposes or activities:
- [Note: Listed below are the standard purposes, which apply to most organisations. Please edit or delete any example purpose which is not applicable or add any relevant purposes not already detailed here]:
- Involving citizens and stakeholders in effective consultation and engagement and using this information to influence decision making on policy and/or the design of services.
  - Gathering feedback and views to evaluate the quality or effectiveness of services, communications, materials, and/or events.
  - Using demographics data for equalities monitoring, to ensure the effectiveness of consultation and engagement by checking that respondents are representative of the intended audience.
  - Processing applications for services, support, funding, and/or events.
  - Gathering information for the auditing of businesses and/or organisations to enable the data exporter to deliver, support the delivery of or improve services.
  - Managing and engaging with staff including monitoring wellbeing, managing work and/or performance and collecting information from exit interviews to help improve employment policies and processes.
  - Delivering and ensuring effective education or training of staff and/or contractors.
  - Managing subscriber lists of interested stakeholders for the purpose of future communications.

Other activities:

- Data analytics, including profiling.
- Licensing and registration, including the administration of licensing or maintenance of official registers.
- Procurement, including deciding whether to accept any person or organisation as a supplier, and the administration of contracts, performance measures and other records.
- Other purposes (please provide details):

#### 1.5 Duration of the Processing

The period from the date of this agreement signed by both parties to the end of the subscription period.

### Part 2: Types of Personal Data

2.1 The personal data processed includes current, past and prospective data subjects. Where any of the following is itself a business or organisation, it includes their staff.

- Personal details, including any information that identifies the data subject and their personal characteristics, including: name, address, contact details, age, date of birth, sex and physical description.
- Personal details issued as an identifier by a public authority, including passport details, national insurance numbers, identity card numbers and driving licence details.
- Family, lifestyle and social circumstances, including any information relating to the family of the data subject and the data subject's lifestyle and social circumstances, including current marriage and partnerships, marital history, details of family and other household members, habits, housing, travel details, leisure activities and membership of charitable or voluntary organisations.
- Educations and training details, including information which relates to the education and any professional training of the data subject, including academic records, qualifications, skills, training records, professional expertise, student and pupil records.
- Employment details, including information relating to the employment of the data subject, including employment and career history, recruitment and termination details, attendance records, health and safety records, performance appraisals, training records and security records.
- Finance details, including information relating to the financial affairs of the data subject, including income, salary, assets and investments, payments, creditworthiness, loans, benefits, grants, insurance details and pension information.
- Goods or services provided and related information, including details of the goods and services supplied, licences issued and contracts.
- Personal data relating to criminal convictions and offences.
- Other (please provide details of other categories of data).

### Part 3: Categories of Data Subjects

3.1 The personal data to be processed may include the following categories of data:

- (a) Staff including volunteers, agents, temporary and casual workers
- (b) Customers and clients (including their staff)
- (c) Suppliers (suppliers including their staff)
- (d) Students / pupils
- (e) Members of the public or supporters
- (f) Patients
- (g) Shareholders

- (h) Relatives, guardians and associates of the data subject
- (i) Complainants, correspondents and enquirers
- (j) Experts and witnesses
- (k) Advisers, consultants and other professional experts
- (l) Offenders and suspected offenders
- (m) Other (please provide details of other categories of data subjects)

3.2 The types of personal data the Client requires to be processed will be any type that an End User enters as part of their response to a survey or consultation and is largely guided by the question the Client asks in their democratic exercises.

3.3 The categories of personal data listed above are the most common. It is extremely unlikely that a respondent would enter financial information, and Delib's [Citizen Space] [Citizen Space with Geospatial] [Dialogue] [Simulator] platform cannot process biometric data.

3.4 Special categories of data [Note: Delete any examples given below if not appropriate]

- (a) The personal data to be processed may include special categories of data depending on the information provided (on a voluntary basis) by the respondents to the Client's consultation process, the extent of which is determined and controlled by the Client in its sole discretion. For the sake of clarity this is will be personal data revealing:
- Race or ethnic origin
  - Political opinions
  - Religious or philosophical beliefs
  - Trade Union Membership
  - Genetic data
  - Biometric data (if used to identify a natural person)
  - Health
  - Sex life or sexual orientation
  - Criminal convictions and offences
  - None of the above