
DELIO SOFTWARE AS A SERVICE
AGREEMENT



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1. SUBSCRIPTION

- 1.1 This software as a service agreement (**Agreement**) governs the basis on which the Service Provider will make available:
- 1.1.1 the web-based application service known as "Delio" provided by the Supplier, and described in a Subscription Form (the **Service**);
 - 1.1.2 to Users a service facilitating introductions in relation to investment opportunities available through the Delio Solution. This service may constitute the regulated activity of arranging deals in investments pursuant to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("**RAO**") and be regulated under Financial Services and Markets Act 2000 ("**FSMA**").and
 - 1.1.3 printed text, online text, images, videos, audio files, data files, animations and text including technical documentation, program specifications and operations manuals owned by the Supplier or any relevant licensors that appear in or are provided by the Supplier in relation to the Service (the **Content**), any and all information, content or documentation (in whatsoever form it may take) provided by, or on behalf of, the Customer or the Users (**User Content**).
- 1.2 The Service and Content shall be referred to collectively as the "**Delio Solution**" and shall be made available to individuals or entities identified by the Customer to allow them to display, share and search for investment opportunities offered by the Customer. The Supplier shall provide all such ongoing support and maintenance services as may be required in order to operate the Delio Solution.
- 1.3 Subject to the terms and conditions of this Agreement, the Supplier grants to the Customer from the Effective Date a non-exclusive, non-transferable right to permit the Users to install, access and use the Delio Solution for the purpose of allowing the Customer and Users to display, share and search for investment opportunities as specified in the Subscription Form (**Subscription**).
- 1.4 The Customer appoints the Supplier to act as a white-labelled provider of the Delio Solution in order to enable its Users access to investment opportunities available through the Delio Solution. This appointment will require the Supplier to enter into a direct relationship with the Users in order to meet various legal and regulatory requirements including those pursuant to FSMA. The Customer agrees to the Supplier dealing directly with its Users pursuant to its legal and regulatory obligations.
- 1.5 The rights provided under this Agreement are granted to the Customer and the Users only, and are not granted to any of their: subsidiary or holding companies; related companies, affiliates, parent undertakings or subsidiary undertakings (as those terms or similar terms are defined in the Laws of England and Wales or any other relevant territory); or connected bodies.
- 1.6 This Agreement shall not prevent the Supplier from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 1.7 In this Agreement unless the context otherwise requires, the following words and expressions will have the following meanings:

Effective Date means the date set out in the initial Subscription Form;

Initial Subscription Term means the initial term of the Subscription as set out in the Subscription Form;

Intellectual Property Rights means any of these rights, namely:

- (a) patents, trade marks, rights in design, get-up, trade dress, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any associated goodwill;
- (b) rights in inventions, know-how, trade secrets and other confidential

information; and

- (c) any other intellectual property rights which may exist at any time in any part of the world;

Laws means any applicable statute or proclamation or any delegated or subordinate legislation; any applicable enforceable community right within the meaning of section 2(1) European Communities Act 1972; any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; and any requirements of any regulatory body, in each case in force at any time;

Losses means all losses, liabilities, damages, costs, claims and expenses howsoever arising (including reasonable legal fees on a solicitor and own client basis and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions) and "**Loss**" shall be construed accordingly;

Optional Services Means:

(a) planned on-site assistance which may include planned training sessions, end user support and configuration services; and

(b) any services that the Customer and the Supplier may from time to time agree will be supplied to the Customer by the Supplier under the terms of this Agreement;

Subscription Form means the completed form or forms agreed between the parties for the Services;

Users means those employees, contractors and clients of the Customer who are requested by the Customer and authorised by the Supplier to use the Delio Solution;

Terms of Service means the Supplier terms of use for Users of the Platform Service from time to time in force; and

Viruses means any item (including any software, code, file or programme) which may:

(a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or

(b) adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

2. THE SERVICE

2.1 The Supplier shall use reasonable endeavours to make the web-based application available at all times, except for:

2.1.1 planned maintenance carried out during the maintenance window of 5.30 p.m. to 7.30 p.m. Wednesday (Greenwich Mean Time); and

2.1.2 unscheduled maintenance, provided that the Supplier has used reasonable endeavours to give the Designated Customer Contact (as identified in the Subscription Form) at least 24 hours' notice in advance.

Service support is available between 9 a.m. and 5 p.m. (Greenwich Mean Time) between Monday to

Friday (excluding UK public holidays).

- 2.2 The Supplier reserves the right to request User or Customer feedback in relation to the Delio Solution by using any technical means including the use of pop-ups during the receipt of the Services or using the Supplier's website, or by email. The Supplier shall not request such feedback directly from the Users (other than employees of the Customer) without the prior written consent of the Customer.
- 2.3 For the avoidance of doubt, the Delio Solution expressly excludes:
- 2.3.1 the development of any interface between the Delio Solution and any Customer systems;
 - 2.3.2 future generations of the Delio Solution, aside from periodic updates to the Delio Solution that Delio makes available to all Customers; and
 - 2.3.3 supply of hardware and mobile phone devices.
- 2.4 The Supplier keeps the features and functionality of the Delio Solution under ongoing review and may alter the features or functionality of the Delio Solution from time to time to resolve operational issues, comply with Law or as it otherwise chooses, in its sole discretion.

3. CONTENT AND USER CONTENT

- 3.1 The Customer is responsible for maintaining a record of all User Content, aside from the User Content provided in relation to the regulatory service provided by the Supplier whereby the responsibility for maintaining these records rests with the Supplier. In the event of any loss or damage to the User Content, the Supplier shall use reasonable endeavours to restore the lost or damaged User Content from the latest back-up of such User Content maintained by the Supplier in accordance with its archiving procedure.
- 3.2 The Customer acknowledges that:
- 3.2.1 where the provision of Content relies on third party consent, the Supplier reserves the right to:
 - (a) remove or restrict access to such Content at any time; and/or
 - (b) require that the Customer returns to the Supplier the Content or destroys any physical copies of the Content (as applicable),if the requisite third party consent is withdrawn;
 - 3.2.2 the Supplier's prior written approval, which shall not be unreasonably withheld, must be obtained for the Customer to disclose any part of the Content to third parties or copy any Content other than as expressly permitted under this Agreement; and
 - 3.2.3 any comments the Customer makes in relation to the Delio Solution must be accurate and not misleading.
- 3.3 The Customer shall not represent or cause others to believe that the Content is the Customer's original work, or that the Supplier endorses or is affiliated with any entity, product or service. The Customer expressly agrees to display the Supplier's (and relevant licensors', if any) copyright and proprietary notice(s) with all of the Content, or any portion(s) thereof, that the Customer uses.
- 3.4 Any User Content may be subject to the Supplier's review. While the Supplier reserves the right to review, monitor, remove or delete User Content, the Supplier is under no obligation to do so and as between the parties the Customer is responsible for all User Content.
- 3.5 The Supplier reserves the right at its sole and absolute discretion to restrict access to the Delio Solution, refuse to display User Content on the Service, remove User Content from the Service, or refuse to use any User Content if the Supplier considers it necessary or appropriate, including if the User Content is deemed by the Supplier to be objectionable, to potentially infringe any third party rights, or to be contrary to applicable Laws or otherwise unsuitable for use in the Delio Solution.
- 3.6 If the Supplier considers, any User Content is in violation of applicable Laws, such User Content may be reported by the Supplier to law enforcement authorities.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier warrants that the Delio Solution will be provided with reasonable skill and care.
- 4.2 The Supplier does not warrant that use of the Delio Solution by the Customer, or any Users will be uninterrupted or error-free but shall use all reasonable endeavours to procure the same.
- 4.3 The Customer acknowledges that:
- 4.3.1 whilst the Supplier may assist to configure the platform as reasonably requested by the Customer, the Delio Solution has not been developed to meet its (or the Users) individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Delio Solution meet its requirements.
 - 4.3.2 the Delio Solution may not be free of bugs and agrees that the existence of minor errors will not constitute a breach of this Agreement.
- 4.4 This Agreement sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Delio Solution. Any clause, condition, warranty, representation or other term concerning the supply of the Delio Solution which might otherwise be implied into, or incorporated in, this Agreement, is excluded to the fullest extent permitted by Law.
- 4.5 The warranty at clause 4.1 and the IPR indemnity at clause 11 shall not apply to the extent of any non-conformance or infringement which is caused by:
- 4.5.1 use of the Delio Solution in combination with components of any third party IT environment or Customer systems;
 - 4.5.2 modification of the Delio Solution by anyone other than the Supplier (or an authorised sub-contractor or agent of the Supplier);
 - 4.5.3 use of the Delio Solution where a non-infringing version or release of the Delio Solution was offered by the Supplier which would have avoided the claim of infringement;
 - 4.5.4 aspects of the Delio Solution which were based on information, direction or specifications provided by the Customer; or
 - 4.5.5 use of the Delio Solution by the Users in breach of any terms of this Agreement, the Terms of Service or contrary to the Supplier's instructions.
- 4.6 If the Services do not conform to the foregoing warranty or are infringing, the Supplier will, at its expense, use reasonable endeavours to correct any such non-conformance or infringement promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 4.1.
- 4.7 Notwithstanding the foregoing, the Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Delio Solution may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.8 The Supplier shall:
- 4.8.1 provide the Customer with:
 - (a) all necessary co-operation in relation to this Agreement; and
 - (b) all necessary access to such information as may be required by the Customer,
- in order for the Supplier to provide the Delio Solution, including data, security access information and configuration services.
- 4.9 The Customer acknowledges that:

- 4.9.1 the Supplier will not undertake any due diligence on companies seeking investment through the Delio Solution;
- 4.9.2 the Supplier does not intend to provide any regulated service under the RAO to Users except the arranging of deals by way of introduction. In particular, the Supplier will not make personal recommendations. Only Users who agree to the Terms of Services of the Supplier and satisfy its criteria will be permitted access to, and continued use of, the Delio Solution. Such criteria may include an appropriateness test for Users pursuant to COBS 10 section of the Handbook of the Financial Conduct Authority ("FCA") handbook; confirmation that Users meet tests in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 ("FPO") including for High Net Worth or Sophisticated clients; and anti-money laundering due diligence assessments;
- 4.9.3 the Supplier may in its absolute discretion suspend the Delio Solution or refuse to permit, or discontinue, access of a particular User to the Delio Solution;
- 4.9.4 the Supplier will not communicate nor approve financial promotions; and
- 4.9.5 the Supplier will not facilitate a communication, constituting a public offer of securities with a total consideration in the EU of more than EUR8 million (and more than EUR1 million calculated over a 12 month period after 21 July 2018) which would be subject to the FCA's Prospectus Rules.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

5.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by the Supplier,

in order for the Supplier to provide the Delio Solution, including data, security access information and configuration services;

- 5.1.2 comply with all applicable Laws with respect to its activities under this Agreement and, in particular, make its own assessment and ensure that its activities in relation to the Service do not constitute regulated activity pursuant to the FSMA;
- 5.1.3 forward any complaints from Users concerning the Platform Services to the Supplier in order to enable the Supplier to decide on the appropriate handling of the complaint;
- 5.1.4 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Delio Solution and, in the event of any such unauthorised access or use, promptly notify the Supplier; and

5.2 Each User:

- 5.2.1 shall sign up to the Terms of Service, prior to using the Delio Solution; and
- 5.2.2 will keep a secure password for the User's use of the Delio Solution and shall keep such password confidential.

5.3 The Customer shall not:

- 5.3.1 use the Delio Solution in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement or the Terms of Service, or act fraudulently or maliciously, for example, by using another User's account, or by hacking into or inserting malicious code, including Viruses, or harmful data, into the Delio Solution, or any operating system;
- 5.3.2 infringe the Supplier's Intellectual Property Rights or those of any relevant licensor or any

third party in relation to its use of the Delio Solution;

- 5.3.3 transmit any material that is defamatory, offensive or otherwise objectionable in relation to its use of the Delio Solution;
- 5.3.4 use the Delio Solution in a way that could damage, disable, overburden, impair or compromise the Supplier's systems or security or interfere with other users;
- 5.3.5 collect or harvest any information or data from the Delio Solution, or from the Supplier's systems, except for User Content or Content for which the User has obtained written permission from the relevant party to use;
- 5.3.6 attempt to decipher any transmissions to or from the servers running any Delio Solution;
- 5.3.7 perform any security testing of the Delio Solution hosting platform either manually or utilising any automated system.
- 5.3.8 copy the Delio Solution except for the purposes of providing the Content to Users as part of the receipt of the Delio Solution provided that this shall not allow the Users to copy any of the code within the Delio Solution nor any concepts in the Content;
- 5.3.9 rent, lease, sub-license, loan, distribute, disclose, or otherwise commercially exploit the Delio Solution or otherwise make it available in whole or in part to any third party;
- 5.3.10 make alterations to, or modifications of, the whole or any part of the Delio Solution, or permit the Delio Solution or any part of it to be combined with, or become incorporated in, any other programs, unless such alterations or modifications are carried out or approved, overseen and managed by the Supplier; or
- 5.3.11 disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Delio Solution or attempt to do any such thing.

6. CHANGES TO SUBSCRIPTION

- 6.1 Subject to **clause** 6.2 and 6.3, the Customer may, from time to time request in writing:
 - 6.1.1 an increase in the maximum number of Users in excess of the respective maximum numbers set out in the Subscription Form;
 - 6.1.2 Optional Services.
- 6.2 The Supplier shall respond to the Customer with approval or disapproval of the request and if approved, it shall issue the Customer with a new Subscription Form detailing the change, any additional terms and charges applicable to the change and setting out the date from which the new Subscription Form shall become effective ("**Change Date**").
- 6.3 The Customer shall be entitled to withdraw the request by written notice given no later than 5 business days before the Change Date, otherwise the Subscription shall be amended in accordance with the Subscription Form issued under Clause 6.2 from the Change Date.

7. DELIO CONNECT

- 7.1 The following additional terms apply to "Delio Connect":
 - 7.1.1 the Customer agrees and accepts that the "Delio Connect" is intended to give users from other customers of the Supplier access to the Delio Solution provided under this Agreement including User Content and access to Users to the Delio Solution provided under the Supplier's contract with its other customers;
 - 7.1.2 this Agreement governs the provision of the Services and Delio Solution only and the Customer is responsible for regulating its relationship with other customers of the Supplier using Delio Connect;
 - 7.1.3 the Supplier is not responsible or liable for any content posted by other customers of the Supplier which may be accessible through Delio Connect; and

- 7.1.4 the Supplier is not liable to the Customer for any act or omission of other customers of the Supplier using Delio Connect.

8. INVOICING AND PAYMENT

- 8.1 The Supplier will issue an invoice for the fees payable by the Customer to the Supplier for the Subscription, as set out in the Subscription Form (**Subscription Fees**) in advance either annually or in accordance with any different billing frequency stated in the Subscription Form. The Customer shall pay the Subscription Fees without set-off or deduction within the time-frame set out in the Subscription Form ("**Due Date**"). If the Customer provides credit or debit card information to the Supplier, the Customer authorises the Supplier to charge such credit or debit card for the Subscription Fees for the Initial Subscription Term and any renewal terms as described in **clause 14.2**.
- 8.2 All amounts and fees stated or referred to in this Agreement:
- 8.2.1 shall be payable in the currency specified in the Subscription Form;
- 8.2.2 are non-cancellable and non-refundable; and
- 8.2.3 are exclusive of any taxes, which shall be added to the Supplier's invoice(s) at the appropriate rate (e.g. VAT).
- 8.3 If the Supplier has not received payment within 14 days after the Due Date, and without limit to any other rights and remedies of the Supplier:
- 8.3.1 the Supplier may, without liability to the Customer, suspend the Customer's access to all or part of the Delio Solution and shall be under no obligation to provide any or all of the Delio Solution while amounts remain unpaid; and
- 8.3.2 the Supplier may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) at the rate of 1.5 per cent per month, or the maximum rate permitted by relevant Laws, whichever is lower. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount and any legal fees incurred by the Supplier in relation to the collection of overdue balances.
- 8.4 The Subscription Fees which apply to any extension following the Initial Subscription Term shall be equal to Subscription Fees that applied during the immediately prior term unless the Supplier has given the Customer written notice of a pricing increase at least two months before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.
- 8.5 On termination or expiry of this Agreement for any reason, the Customer will immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier will submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer will pay these invoices immediately on receipt.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges that all Intellectual Property Rights in the Delio Solution anywhere in the world belong to the Supplier or its relevant licensors, that rights in the Delio Solution are licensed (not sold) to the Customer, and that the Customer has no rights in, or to, the Delio Solution other than the right to use the Delio Solution in accordance with the terms of this Agreement. This Agreement does not grant the Users any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Delio Solution, including source-code.
- 9.2 The Delio Solution may be protected by digital rights management ("**DRM**") so that the Intellectual Property Rights in it are not misappropriated. The Customer must not attempt in any way to remove or circumvent any such DRM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such DRM.
- 9.3 The Supplier does not acquire any Intellectual Property Rights in respect of User Content.

10. INDEMNITY PROVIDED BY CUSTOMER

10.1 The Customer shall defend, indemnify and hold harmless the Supplier against all Losses arising out of or in connection with the Customer's and the Users' use of the Delio Solution, including any failure to comply with Clause 5.

10.2 In relation to any claim which gives rise or may give rise to any Loss in respect of which the Customer shall indemnify the Supplier under **clause** 10.1:

10.2.1 the Supplier shall give the Customer prompt notice of any such claim;

10.2.2 the Supplier shall provide reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

10.2.3 the Customer shall be given sole authority to defend or settle the claim.

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY PROVIDED BY THE SUPPLIER

11.1 Subject to clauses 11.2 and 4.5, the Supplier will defend any claim against the Customer and pay the damages and costs finally awarded against the Customer by a court of competent jurisdiction to the extent the Delio Solution is held to infringe any Intellectual Property Rights of any third party in England and Wales.

11.2 The Customer shall:

11.2.1 without delay (but no later than 10 days from the date the Customer became aware of such claim) provide written notification to the Supplier of the claim;

11.2.2 allow the Supplier to conduct the defence to the action or claim and all negotiations for settlement relating to the action or claim;

11.2.3 not make any admission or take any other action which may be prejudicial to the defence of the action or claim or which may adversely affect the Supplier's ability to negotiate a satisfactory settlement to the action or claim; and

11.2.4 at the request and expense of the Supplier, provide all reasonable assistance in defending the action or claim.

12. CONFIDENTIALITY

12.1 The Customer and the Supplier each agree to keep confidential, not to disclose to any third party and to protect in the same manner that itself protects, but in no event using less than a reasonable standard of care, any information relating to the other's past, present and future research, development, business activities, products, services and technical knowledge, disclosed in connection with the Delio Solution and which is identified by the disclosing party as confidential information or which a reasonable person would deem to be confidential under the circumstances ("**Confidential Information**") provided that Confidential Information may be passed to their or a Customer's personnel, subcontractors, auditors, professional advisers or to Users, in each case under equivalent obligations of confidentiality and then only as necessary for the delivery or receipt of the Delio Solution or otherwise as necessary for the performance of their obligations under or to receive the benefit of this Agreement.

12.2 The Customer and the Supplier each agrees not to make use of any Confidential Information of the other party for any purpose other than:

(a) using the Delio Solution in accordance with this Agreement;

(b) as required by relevant Laws;

(c) except as reasonably needed to perform its obligations under this Agreement.

12.3 The obligations of confidentiality and non-use set out in this clause 12 shall not apply to any Confidential Information where the receiving party can demonstrate that the Confidential Information concerned:

- 12.3.1 is or becomes publicly known through no breach of this clause 12;
- 12.3.2 is lawfully received from an independent third party which was not, to the receiving party's knowledge, under an obligation not to disclose such information;
- 12.3.3 is already known to the receiving party with no obligation of confidentiality at the date it was disclosed by or obtained from the disclosing party;
- 12.3.4 is disclosed without restriction by the disclosing party to any third party; or
- 12.3.5 is independently developed by or for it without use of the Confidential Information.

13. DATA PROTECTION AND DATA PROCESSING

13.1 In this clause 13:

Controller, Data Subject, Personal Data, Processor, Process and Processing have the meaning given under the General Data Protection Regulation (EU 2016/679) ("GDPR") or any replacement legislation in the UK;

Data means information the Customer or Users give the Supplier, information the Supplier collects about the Customer or User and information the Supplier receives from other sources;

Data Breach means (i) any unauthorised loss, corruption, damage, destruction, alteration, disclosure or access to any Personal Information; (ii) any unauthorised or unlawful Processing of Personal Information; or (iii) any breach of Data Privacy Laws;

Data Privacy Laws means all laws in any relevant jurisdiction that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including, without limitation, the GDPR (or any replacement legislation in the UK), and the equivalent in any other relevant jurisdictions;

EEA means the member states of the European Union, Norway, Iceland and Liechtenstein;

ICO means the UK Information Commissioner's Office, or the equivalent national data protection authority in any relevant jurisdiction;

Joint Data Controller means the Parties acting together or severally as Data Controllers;

Personal Information means any information which: i) falls within the definition of Personal Data; and ii) in relation to which the Supplier is providing the Delio Solution or which the Supplier is required to Process (subject to the Data Privacy Laws) in connection with this Agreement;

Personnel means any employees, agents and consultants of each party and of any Subcontractor engaged in the Processing of Personal Information;

Regulator means each person having regulatory or supervisory authority over all or any part of (a) the Processing of the Personal Information or (b) the business of any party from time to time;

Subcontractor means a third party engaged by either party in relation to that party's obligations under this Agreement.

13.2 The parties acknowledge and agree that the factual arrangement between them dictates the classification or status of each party in respect of Data Privacy Laws.

13.3 Notwithstanding clause 13.2, the parties anticipate that in certain circumstances they will be acting as Joint Data Controllers under Data Privacy Laws and each party will be a Joint Data Controller with the other party in respect of the Personal Information relating to each of the Data Subjects whose

Personal Information is processed in the delivery of the Service. To the extent that the parties are deemed to be acting as Joint Data Controllers, clauses 13.4 to 13.9 shall apply.

13.4 Under Data Privacy Laws, as Joint Data Controllers the parties agree that, in relation to any liability to any third party which arises either as a result of a breach by a party of clauses 13.5 to 13.9 below or otherwise as a result of a breach by a party of its obligations as a Joint Data Controller under Data Privacy Laws (**Third Party Liability**), the parties agree as follows:

13.4.1 the parties shall not (as between themselves) be jointly and severally liable in respect of the Third Party Liability; and

13.4.2 each party shall be liable only for Third Party Liabilities that it causes or is determined to cause.

13.5 Each party shall:

13.5.1 take all appropriate technical, security, and organisational measures necessary or desirable in relation to the Processing of Personal Information which shall as a minimum include the following measures preventing unauthorised persons from gaining access to data processing systems with which Personal Information are Processed or used;

13.5.2 maintain a record of all categories of Processing activities it undertakes under this Agreement and a record of any Data Breach and provide a copy of such record(s) to the other party for inspection on demand;

13.5.3 so far as is possible comply with the principle of data minimisation;

13.5.4 in respect of its Personnel and Subcontractors:

(i) take all reasonable steps to ensure: (A) the reliability and trustworthiness of its Personnel who will have access to any Personal Information; (B) that any of its Personnel requiring access to any Personal Information are aware of the confidential nature of the Personal Information; (C) that such Personnel give a written undertaking not to access, use, disclose or retain Personal Information except in performing their duties of employment in accordance with this Agreement; and (D) that such Personnel are informed that failure to comply with this undertaking may be a criminal offence and may also lead the relevant party to take disciplinary action against them;

(ii) employ only Personnel who have committed themselves to confidentiality or are under an obligation of confidentiality; and

(iii) ensure that only Personnel authorised by the relevant party to have access to Personal Information do have access to Personal Information and that no other Personnel shall have access to the Personal Information.

13.6 The parties shall:

13.6.1 as soon as is practicable following the Effective Date of this Agreement, agree and finalise operational processes and procedures which:

(i) comply with Data Privacy Laws; and

(ii) ensure that each relevant Data Subject receives an appropriate Privacy Policy and agrees to the Terms of Service; and

(iii) ensure that the form and content of the Privacy Policy to be provided to all Data Subjects is agreed between the parties.

13.7 If a Data Subject makes a written request to either party for access to any Personal Information, the relevant party to whom the request was made shall notify the other party of that request as soon as is practicable and in any event not more than two (2) days following the request being made.

13.8 Upon notification or a request under clause 13.7, each party shall promptly and without delay:

13.8.1 liaise as necessary with each other; and

13.8.2 agree such matters and take such steps as may be necessary,

in each case in a manner that ensures that the request is appropriately dealt with in accordance with the relevant Data Controller's obligations under the Data Privacy Laws.

13.9 The parties shall agree breach reporting protocols to ensure the parties liaise and collaborate in order to meet their legal obligations to report breaches of Data Privacy Laws to the ICO.

13.10 Notwithstanding clause 13.2, to the extent that the Service Provider is deemed to be acting as a Data Processor on behalf of the Customer as Data Controller in respect of the Personal Information relating to each of the Data Subjects whose Personal Information is processed in the delivery of the Service, clauses 13.10 to 13.15 shall apply, and the parties acknowledge and agree that:

13.10.1 the Customer shall:

- (a) comply with all Data Privacy Laws;
- (b) obtain and maintain all relevant registrations (and similar) required by Data Privacy Laws; and
- (c) ensure that all instructions that it issues to the Service Provider comply with Data Privacy Laws.

13.10.2 the Service Provider shall:

- (a) Process the Personal Information only on the documented instructions of the Customer, except to the extent that any Processing of Personal Information is required by applicable Laws;
- (b) where Processing of Personal Information by the Service Provider is required by applicable Laws, the Service Provider shall inform the Customer of the relevant legal requirement before processing, unless such law prohibits the Service Provider from doing so;
- (c) notify the Customer where the Service Provider reasonably believes any documented instructions from the Customer in respect of the Processing of Personal Information infringe any Data Privacy Laws or any other applicable Laws;
- (d) ensure that its Personnel who are authorised to Process the Personal Information have committed themselves to confidentiality;
- (e) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of Processing;
- (f) only appoint a third party to Process Personal Information on its behalf in accordance with clauses 13.11 and 13.12 below;
- (g) taking into account the nature of the Processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights under Data Privacy Laws;
- (h) notify the Customer without undue delay after becoming aware of a Data Breach;
- (i) assist the Customer in its compliance with its obligations under Data Privacy Laws in respect of notifying Data Breaches to the ICO and affected Data Subjects, insofar as it is able taking into account the nature of the Processing and the information available to the Service Provider;
- (j) at the Customer's discretion, delete or return to the Customer all of the Personal Information Processed under this Agreement on completion of the provision of the Service and delete any copies of such Personal Information unless any applicable Laws require that copies are kept; and

- (k) make available to the Customer all information necessary to demonstrate compliance with its obligations in this clause 13.10.
- 13.11 The Supplier shall inform the Customer of any intended changes concerning the addition or replacement of any sub-contractors and the Customer shall notify the Supplier of any objections it has to any such changes in writing within ten business days, after which any such changes which the Customer has not objected to in accordance with this clause 13.11 shall be deemed to be accepted
- 13.12 Where the Service Provider sub-contracts its Processing of Personal Information to a third party in accordance with clause 13.11 above, the Service Provider shall:
 - 13.12.1 ensure that any such third party is subject to the same data protection obligations as those set out in clause 13.10.2 above;
 - 13.12.2 obtain sufficient guarantees from any such third party that they will implement appropriate technical and organisational measures in such a manner that the Processing of Personal Information by such third party will meet the requirements of Data Privacy Laws; and
 - 13.12.3 remain liable to the Customer for any Processing of Personal Information by any such third party.
- 13.13 Each party shall co-operate with the ICO on the request of the other party in respect of the performance of its tasks under this Agreement.
- 13.14 The Service Provider shall not transfer Personal Information to any country outside the EEA without the prior written consent of the Customer, such consent may be subject to and given on such terms as the Customer may in its discretion prescribe (acting reasonably and in compliance with Data Privacy Laws).
- 13.15 In the event that the Customer consents to the transfer of Personal Information from the Service Provider to a country outside of the EEA under clause 13.14, the Service Provider shall confirm in writing details of how the Service Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Information that will be processed in and/or transferred outside of the EEA so as to ensure compliance with the Data Privacy Laws.

14. TERM AND TERMINATION

- 14.1 This Agreement commences on the Effective Date and shall continue until the Subscription has expired unless terminated earlier as provided in this clause 14.
- 14.2 The Subscription will automatically renew for additional periods equal to the Initial Subscription Term or 12 months (whichever is shorter), unless either party gives the other notice of non-renewal at least one month before the expiry of the relevant term.
- 14.3 Notwithstanding any other provision of this Agreement, and without limiting any other rights that the parties may have, either party may immediately terminate this Agreement by written notice to the other if:
 - 14.3.1 the other party commits a material breach of its obligations under this Agreement and fails to remedy such breach (if capable of remedy) within 14 business days of having received written notice of breach; or
 - 14.3.2 the other party enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade.
- 14.4 On termination of this Agreement for any reason:
 - 14.4.1 all licences granted under this Agreement shall immediately terminate;
 - 14.4.2 each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party;
 - 14.4.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be

affected or prejudiced; and

- 14.4.4 the Supplier may destroy or otherwise dispose of any of the User Content in its possession after 30 days of termination or expiry of this Agreement.

15. LIMITATION OF LIABILITY

- 15.1 The Supplier shall not under any circumstances whatsoever be liable to the Customer, or the Users whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- 15.1.1 loss of profits, sales, business, or revenue;
- 15.1.2 business interruption;
- 15.1.3 loss of anticipated savings;
- 15.1.4 loss of business opportunity, goodwill or reputation; or
- 15.1.5 any incidental, indirect or consequential, special or punitive loss or damage.

- 15.2 Subject to clause 15.3 and 15.5, the Supplier's maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to 100 per cent of the Subscription Fees paid by the Customer in the year which the liability arises.

- 15.3 Nothing in this Agreement limits or excludes the liability of the Supplier for:

- 15.3.1 death or personal injury caused by the other party's negligence; or
- 15.3.2 fraud or fraudulent misrepresentation; or
- 15.3.3 any other obligation implied by law which cannot lawfully be excluded or limited.

- 15.4 The Supplier utilises third party suppliers for a number of aspects of the Services and Delio Solution, including hosting, and notwithstanding the other provisions of this Clause 15, where:

- 15.4.1 the Supplier is in breach of its obligations under this Agreement;
- 15.4.2 such breach is due to the action or omission of a third party supplier; and
- 15.4.3 the Customer suffers a Loss as a direct result of any such breach,

the Supplier shall use reasonable endeavours to recover such Losses from the relevant third party supplier in accordance with the terms of the relevant third party agreement.

- 15.5 Where the Supplier recovers Losses from a third party supplier in accordance with clause 15.4, following receipt of any relevant amounts from the third party supplier, the Supplier shall pass-through such amounts to the Customer provided that where the Supplier recovers Losses from the third party which relate to losses of the Supplier and its other customers, as well as Losses of the Customer the Supplier shall pass on that proportion of the Losses recovered which relates to the Customer's Losses in proportion to the overall Losses.

16. ASSIGNMENT AND SUBCONTRACTING

Neither party may assign or otherwise transfer any benefit or obligation arising under this Agreement without the prior written consent of the other party, provided that the Supplier may assign or transfer this Agreement or any or all of its rights and/or obligations under it to any company in its group and sub-contract the performance of any or all of its rights and/or obligations under this Agreement.

17. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts,

events, omissions or accidents beyond its reasonable control, including industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or telecommunications service, telecommunications network or default of service providers or sub-contractors.

18. NOTICES

18.1 Any notice given under or in relation to this Agreement will be in writing and signed by or on behalf of the party giving it and may be served by delivering it personally, by post or by email to the address and for the attention of the relevant party given in the Subscription Agreement.

18.2 Any such notice will be deemed to have been received:

18.2.1 if delivered personally, at the time of delivery;

18.2.2 in the case of post or tracked delivery, 72 hours from the date of posting; and

18.2.3 in the case of email at the time the email enters the IT system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.

19. PUBLICITY

All advertising, press releases, public announcements and public disclosures by either party relating to this Agreement which expressly or impliedly refers to the other party shall be subject to approval by both parties prior to release, such approval not to be unreasonably withheld, provided, however, that either party may indicate to third parties that the Supplier is providing services to the Customer and the Supplier may use the Customer as a reference.

20. GOVERNING LAW & JURISDICTION

Each party agrees that this Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

21. GENERAL

21.1 A person who is not a party to this Agreement, including Users, shall have no rights to enforce any term of this Agreement.

21.2 A party can only waive a right or remedy provided in this Agreement or by law by express written notice. No delay by either party in enforcing its rights will limit or restrict the rights of that party and any single or partial exercise or waiver of any power, right or remedy will not preclude its further exercise or the exercise of any other power, right or remedy.

21.3 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.

21.4 Each party undertakes at the request of the other and at the cost of the other to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

21.5 This Agreement (and any documents referred to in it) contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them.

21.6 Nothing in this Agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between either of the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name of or on behalf of or otherwise to bind the other party in any way.

21.7 From time to time the Supplier may use a third party for the transmission of communications to the Customer and Users in which case, notwithstanding anything to the contrary in this Agreement, such transmission of communications shall be subject to the terms and conditions of the relevant third party

providing such services.

21.8 In this Agreement:

- 21.8.1 references to a statutory provision include references to the statutory provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision;
- 21.8.2 the relevant Subscription Form forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement, provided that in the event that the terms of the Subscription Form conflict with clauses 1 to 21 of this Agreement, clauses 1 to 21 of this Agreement shall prevail; and
- 21.8.3 the phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

