



Digi-Board Limited

Terms of Service

Digi-Board Limited (the “Supplier”) makes available Digi-Board Software a web-based board governance diagnostic application to Subscribers on a pay as you go basis.

The Subscriber wishes to subscribe to the Digi-Board Software (delivered as Software as a Service) and acquire a temporary licence for the one-time use of the Digi-Board Software on the following terms:

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“Ad Hoc Personal Data” means personal data supplied to Digi-Board and/or the End Users (but excluding Shared Personal Data and Support Personal Data), where agreed pursuant to clause 9.2(a).

"Agreement" means this agreement together with the Schedules, and any documents annexed by reference, as amended from time to time in writing and agreed by the parties.

“Applicable Laws” has the meaning given in clause 9.4(a).

"Application" means the Digi-Board Software, together with any third party software necessary for the Digi-Board Software to run effectively by means of a hosting service with online access, including Proprietary Software.

"Authorised Companies" means a Digi-Board authorised partner, a registered charity, a charitable incorporated organisation (CIO), a limited company incorporated by a registered charity in the Subscriber Group who are permitted to use the Modules and the Site under this Agreement.

"Bespoke Development" means any changes to the Digi-Board Services made available by Supplier specifically for the Subscriber and Authorised Companies. Supplier will generally make a charge for Bespoke

Developments, any such charges to be agreed with the Subscriber in accordance with the Agreement.

"Business Days" means any day other than a Saturday, Sunday or a public holiday in the United Kingdom.

"Company Administrators" means those persons appointed by the Subscriber with rights to access and use the content of Question Banks and if agreed in writing to create and amend User Questionnaires for which Digi-Board reserve the right to charge for.

"Confidential Digi-Board Information" means all information of a confidential Digi-Board nature provided to either party by or on behalf of the other party in connection with this Agreement, in any form or medium (whether in writing, orally, electronically or by any other means), whether before or after the date of this Agreement and which:

- (a) is labelled as Confidential Digi-Board;
- (b) is clearly Confidential Digi-Board given the nature of the information or circumstances under which it was disclosed; or
- (c) would be regarded as Confidential Digi-Board by a reasonable business person in the context of the disclosing party's business,

including the Digi-Board source code and object code relating to the Digi-Board Software, content of Question Banks, Subscriber information connected to the responses to User Questionnaires, information of a commercial nature, marketing, financial, technical or operational nature, intentions, ideas, plans, proposals, products, results, investigations, research, surveys, operations, processes, reports, statistics, know-how, trade secrets, software, intellectual property rights, the terms of this Agreement and the commercial and financial arrangements evidenced by this;

“Contributions” means any and all data, information and other material posted, contributed, inputted and/or uploaded to the Site (and/or to Supplier’s servers and/or those of any third party providing services on Supplier’s behalf).

“Data Protection Legislation” means: (i) in relation to a party, any and all (howsoever named) laws, enactments, regulations, orders, standards and other similar instruments (as well as any guidance and codes) applicable to such party that relate to the processing of personal data and privacy; and

(ii) without prejudice to the generality of the foregoing:

- (a) the E-Privacy Directive;
- (b) the PECR; and
- (c) the GDPR,

and any UK national implementing laws, regulations and secondary legislation as well as any and all guidance and codes of practice issued from time to time in relation thereto by the UK Information Commissioner (including the Data Sharing Code) and/or by the Article 29 Working Party

unless and until the GDPR is no longer directly applicable in the UK and, thereafter:

- (d) any UK successor legislation and regulations thereof; and
- (e) any and all guidance and codes of practice issued from time to time in relation thereto by the UK Information Commissioner.

“Data Sharing Code” means the Information Commissioner’s Data Sharing Code of Practice of May 2011 or its successor to the extent applicable to the sharing of personal data under the GDPR.

“Defect” means where the Digi-Board Services fail to conform in all material respects to the Specification, and such defect does not result from the Subscriber, Authorised Companies, or anyone acting with the authority of the Subscriber, having used the Digi-Board Services outside the scope of this Agreement, or in combination with any other software not provided by Supplier.

“EEA” means the European Economic Area, including the UK (should the UK leave the European Union).

“E-Privacy Directive” means Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

“End Users” means Company Administrators and Named Responders.

"Force Majeure Event" means any cause beyond a party's reasonable control including: (i) any act of war (whether declared or undeclared) invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, explosion, civil commotion, sabotage, terrorism or threat thereof; (ii) any act of state or other exercise of sovereign, judiciary or executive prerogative by any competent government authority; or (iii) any act of God, lightning, earthquake, tempest, flooding, fire, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm and other extreme adverse weather conditions.

"GDPR" means General Data Protection Regulation (EU) 2016/679.

"Group" means for each party its ultimate Holding Company and any Subsidiary of the ultimate Holding Company of the party from time to time and "Group Companies" shall be construed accordingly.

"Holding Company" means a holding company (as defined by section 1159 of the Companies Act 2006) or a parent undertaking (as defined by section 1162 of the Companies Act 2006).

"Infringement Claim" means any claim or action threatened or brought against the Subscriber and/or Authorised Companies alleging that the use of the Site and the Digi-Board Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party.

"Intellectual Property Rights" means all patents, copyrights including rights in computer software, rights to inventions, designs and design rights, trade marks, service marks, trade names, trade secrets, know-how, logos, get-up, domain names, database rights and Confidential Information (whether registered or unregistered) and all applications for the same (or rights to apply), and all similar forms of protection anywhere in the world.

"Modification" means any change to the Digi-Board Software that is not a Bespoke Development.

"Module" means any specific module developed by Supplier, each relating to a particular aspect of governance and containing the Questionnaires relevant to that Module, to be made available to the Subscriber and Authorised Companies as part of the Digi-Board Services on payment of the applicable fee.

"Named Responders" means those named individuals (being employees, officers, contractors, agents or external advisors of the Subscriber and Authorised Companies) determined by the Subscriber to have the right to view and answer questions in Questions Banks and User Questionnaires. For the avoidance of doubt Named Responders shall not make any amendments to Questions Banks or User Questionnaires or have any other rights to use Digi-Board.

"PECR" means The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003).

"Proprietary Software" means any software (for example, Adobe Acrobat) now or hereafter made available to the Subscriber and Authorised Companies on the Site for the purpose of providing Digi-Board Software.

"Question Banks" means all of the Modules collectively, together with all the proprietary question sets prepared by Supplier contained within them.

"Shared Personal Data" means the personal data set out in the deed entered into between the Subscriber and Supplier pursuant to clause 9.10(a).

"Sharing Agreement" has the meaning given in clause 9.10.

"Site" means Supplier's website at www.thedigiboard.co.uk

"Specification" means of the specification for the Digi-Board Services as identified in Annex A.

"Subscriber Material" means any and all data, information and other materials made available to Supplier by or on behalf of the Subscriber including:

- (a) any files, data and information relating to the Subscriber or its Authorised Companies, including information and data relating to any customer, director and/or any other member of staff of the Subscriber or its Authorised Companies, which may be provided to, and/or accessed by, Supplier during the performance of its obligations under this Agreement, which are embodied in any electronic magnetic optical or tangible media supplied to Supplier from the Subscriber, or which Supplier generates, processes, stores or transmits pursuant to this Agreement in providing the Digi-Board Services (including any personal data); and
- (b) any Intellectual Property Rights of the Subscriber or its Authorised Companies subsisting prior to the commencement of this Agreement.

"Subscription Fee" means the one-time fee payable in advance at the time of the Subscriber placing an order on the Supplier.

"Subsidiary" means a subsidiary (as defined by section 1159 of the Companies Act 2006) or a subsidiary undertaking (as defined by section 1162 of the Companies Act 2006).

"Support Personal Data" contact details (e.g. names, email addresses and phone numbers) of certain of the Subscriber's personnel to whom support is being provided by the Supplier as well as records of the support provided.

"Term" refers to the one-time access to the Question Banks commencing on the date of the purchase and ending upon the closure of the Question Banks. Reports generated upon closure of the Question Banks are made available to Company Administrators as described in Annex A.

"Terms of Use" means the terms of use set out in Annex A (as amended by Supplier from time to time).

"Digi-Board" means the Digi-Board Services, the Digi-Board Software, any Modifications, the Site and the Digi-Board Documentation, and shall include any Bespoke Developments unless agreed specifically by the parties in writing.

"Digi-Board Documentation" means any and all instruction manuals, user guidelines, functional specifications and other user documents relevant to the Digi-Board Services made available by Supplier to the Subscriber and Authorised Companies.

"Digi-Board Services" means those services available through the Application to the Subscriber and Authorised Companies for the use of the Modules set out in the Digi-Board Subscription, and use of the Digi-Board Software, the Digi-Board Documentation and any and all off-line or third party components, data, lists, reports, dashboards, templates or services made available by Supplier for this purpose.

"Digi-Board Software" means the web-based computer programs which have the core functionality detailed in the Specification, including, as appropriate, Modifications and Bespoke Developments, together with required templates, scripts, portals, tools and customised web pages.

"Digi-Board Subscription" means the details of the subscription as set out in Schedule 1 as amended in accordance with clause 19 from time to time.

"Digi-Board Support Services" means those support services provided by Supplier to the Subscriber as described in Annex B.

"UPD Data Security Breach" means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Unshared Personal Data.

"Unshared Personal Data" means the Ad Hoc Personal Data and the Support Personal Data.

"User Questionnaires" means the bespoke questionnaires that the Subscriber and Authorised Companies are entitled to create and use in accordance with the Modules subscribed for, details of which are set out in the Digi-Board Subscription.

"VAT" means value added tax and any equivalent tax chargeable in the UK or elsewhere.

- 1.2 The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.
- 1.3 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 Unless the context otherwise requires:
 - (a) a reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- (b) references to Supplier and the Subscriber include their permitted successors and assigns;
- (c) references to a statute or statutory provisions include:
 - (i) those statutory provisions as amended or re-enacted;
 - (ii) all subordinate legislation made from time to time under that statute or statutory provision;
- (d) references to any gender include all genders; and
- (e) words in the singular include the plural and in the plural include the singular.

1.6 Subject to clause 1.5 if there is an inconsistency between any provision:

- (a) in the main body of this Agreement and any schedule or annex, the provision in the main body of this Agreement shall prevail; and
- (b) in any schedule or annex and any other schedule or annex, the earlier schedule or annex (as applicable) shall prevail.

1.7 Save with respect to the definition of Data Protection Legislation, appropriate technical and organisational measures, controller, data subject, personal data, processor, processing and supervisory authority shall have the meaning ascribed to them in the GDPR. (Process, processed etc. shall be construed accordingly.).

1.8 In this Agreement, where there is a reference to the consent of a data subject, consent shall have the meaning ascribed to it in the GDPR.

2 DIGI-BOARD SERVICES

2.1 Subject to clause 2.6 and in consideration of the receipt by Supplier of the Subscription Fee, Supplier grants to the Subscriber a non-exclusive, non-transferable, right to use the Site and the Digi-Board Services for the Term subject to the terms set out below.

- 2.2 Further to clause 2.1, the Authorised Companies shall be entitled to use the Site and the Digi-Board Services under this Agreement, provided that the Subscriber shall procure that each Authorised Company abides by the terms of this Agreement.
- 2.3 Supplier shall use commercially reasonable endeavours to make the Digi-Board Services available during the Term, subject to any planned updates which shall be notified to the Subscriber in advance or any required maintenance to the Digi-Board Software where that interruption to service is planned to exceed 12 hours.
- 2.4 The Subscriber shall be entitled to appoint any number of Named Responders and will procure that all Named Responders comply with the terms of this Agreement.
- 2.5 The Subscriber and Authorised Companies shall be entitled to:
- (a) print from the Digi-Board Software on the basis set out in the Terms of Use; and
 - (b) otherwise use the Site and the Digi-Board Services for the purposes contemplated in this Agreement.
- 2.6 The scope of the rights granted in this clause 2, to which the Subscriber and Authorised Company must adhere, are as follows:
- (a) Digi-Board must only be used for the purpose or in a context for which the Digi-Board was designed;
 - (b) the User Questionnaires shall be used only for, or in direct relation to, the subject matter of the Module subscribed for;
 - (c) use of the Site and the Digi-Board Services shall be restricted to the normal business purposes of the Subscriber and Authorised Companies;

- (d) the Digi-Board Services may only be used by, or for the benefit of, employees, contractors or agents of the Subscriber and Authorised Companies;
- (e) the Subscriber and Authorised Companies may not use the Digi-Board Services other than as specified in this Agreement within Schedule 1 or with prior written consent of Supplier, and the Subscriber and Authorised Companies acknowledge that additional fees may be payable on any change of use approved by Supplier;
- (f) the Subscriber and Authorised Companies shall not provide copies of, disseminate, or otherwise disclose in any way whatsoever the content of the Question Banks, in whole or in part, to any persons other than Named Responders unless expressly permitted by this Agreement or by the prior written approval of Supplier;
- (g) except as stated in this clause 2 and to the extent permitted by applicable law, the Subscriber and Authorised Companies have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Digi-Board Software underlying the Digi-Board Services, in whole or in part.

2.7 Supplier will provide the Subscriber with the Digi-Board Support Services during the Term.

3 SUBSCRIPTION FEE

3.1 The Subscriber shall pay to Supplier the Subscription Fee upon placing an order at www.thedigiboard.co.uk All sums payable under this Agreement are exclusive of VAT, for which the Subscriber shall be responsible, if applicable.

3.2 Access to the Site and the Digi-Board Services will be granted to the Subscriber within one Business Day of the Subscription Fee being received in the bank account specified by Supplier.

4 MODIFICATIONS

4.1 Supplier shall inform the Subscriber of any material Digi-Board Modifications and Supplier shall make all Modifications available to the Subscriber through the Site on the terms on which they are generally made available to Supplier's subscribers.

4.2 The warranty at clause 5.1 will not apply to any Modifications which are required by law.

5 WARRANTIES

5.1 Supplier warrants that the Digi-Board Services and any Modifications (subject to clause 4.2) will conform in all material respects to the Specification. If the Subscriber notifies Supplier in writing of any Defect, Supplier shall – at Supplier's option – do one of the following:

- (a) remedy as soon as practicable the Digi-Board Services; or
- (b) where Supplier considers (acting reasonably) the Defect is incapable of remedy using commercially reasonable efforts, terminate this Agreement immediately by notice in writing to the Subscriber and refund any pro-rata proportion of the Subscription Fee paid by the Subscriber for the remaining Term as at the date of termination;

which shall – subject to clause 6.1 – constitute Supplier's sole liability, and the Subscriber and its Authorised Companies sole remedy, in respect of a breach of the warranty in this clause 5.1.

- 5.2 The Subscriber and Authorised Companies shall provide all the information reasonably required to assist Supplier in resolving the Defect, including sufficient information to enable Supplier to re-create the Defect.
- 5.3 The Subscriber and Authorised Companies acknowledge that software in general is not error free, and agree that the existence of non-material errors in the Digi-Board Software shall not constitute a breach of this Agreement.
- 5.4 The Subscriber and Authorised Companies accept responsibility for electing to subscribe to the Digi-Board Services to achieve its intended results and acknowledge that, other than any Bespoke Developments, Digi-Board was not designed and produced to its individual requirements.
- 5.5 Each party warrants that it has the authority to execute this Agreement, and the Subscriber warrants that it has the ability to, and will, procure that the Authorised Companies and End Users will adhere to the terms of this Agreement, including clauses 2.6, 7.1, 7.4, 8, 10, 12.3 and 16, as if they were parties to it.
- 5.6 All other conditions, warranties or other terms which might have effect between the parties or any third party including Authorised Companies, or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permissible by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or that use of the Digi-Board Services will be uninterrupted or error free.

6 LIMITS OF LIABILITY

- 6.1 Nothing in this Agreement shall exclude either party's liability to any other person for:

- (a) death or injury resulting from a party's negligence;

- (b) fraud or fraudulent misrepresentation; or
 - (c) any matter, liability for which a party cannot legally limit or exclude or attempt to limit or exclude.
- 6.2 Subject to clause 6.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall be limited to the greater of:
 - (a) £25,000; or
 - (b) the sums paid to Supplier by the Subscriber during the 12 months preceding the date on which the claim arose
- 6.3 Subject to clauses 6.1, 6.2 and 20, where Supplier is stated to owe an obligation to Authorised Companies in this Agreement, Supplier shall be liable to the Subscriber for any loss suffered by such Authorised Companies where Supplier would have been liable to the Subscriber had such loss been suffered by the Subscriber, provided that:
 - (a) for the avoidance of doubt, clause 6.2 shall apply to all claims by the Subscriber (including any and all claims in respect of losses suffered by Authorised Companies); and
 - (b) Supplier shall have no liability whatsoever to any Authorised Companies in the event that any Authorised Company threatens to bring (or brings) a claim whatsoever directly against Supplier (except where Supplier and an Authorised Company have directly entered into a contract between them).
- 6.4 Subject to clause 6.1, the limitations and exclusions in this clause 6 shall apply to the fullest extent permissible by law.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Subscriber and Authorised Companies acknowledge that all Intellectual Property Rights in Digi-Board and the Application shall belong to Supplier and its licensors, as appropriate. For the avoidance of doubt all content published on the Site, including reports, presentations, written content, graphics, images, marks, logos, sound or video clips, and Flash or Java animation, are protected by Supplier's copyrights or trademarks or those of Supplier's partners or licensors.
- 7.2 Supplier acknowledges that all Intellectual Property Rights in the Subscriber Materials shall belong to the Subscriber and Authorised Companies.
- 7.3 The Subscriber warrants that the use by Supplier of the Subscriber Materials shall not infringe the Intellectual Property Rights of any third party.
- 7.4 Save as expressly stated in this Agreement neither party shall:
- (a) acquire any interest in any of the Intellectual Property Rights of the other party or their licensors;
 - (b) use the trade marks or brand names of the other party without the other party's prior written consent (not to be unreasonably withheld, conditioned or delayed); or
 - (c) take any action which might invalidate the Intellectual Property Rights owned by or licensed to the other party.

8 CONFIDENTIAL DIGI-BOARD INFORMATION

- 8.1 Each party warrant that they will, and the Subscriber warrants the Authorised Companies will, use the same standard of care and discretion as they employ with their own commercially sensitive information (but in

no event less than reasonable care and discretion) to keep the other party's information confidential.

8.2 Each party and the Authorised Companies shall only make copies of the Confidential information, or disclose the same to its employees, as is necessary for the performance of its obligations.

8.3 Subject to 8.2, neither party, nor the Authorised Companies, shall make any disclosure of the Confidential Information without the written agreement of the other party.

8.4 The definition of Confidential Information does not include any data or information which:

- (a) was already known to the receiving party;
- (b) has become generally known to the public through no wrongful act or breach of these terms by the receiving party;
- (c) has been rightfully received by the receiving party from a third party without restriction on disclosure and without, to the knowledge of the recipient, a breach of an obligation of confidentiality running directly or indirectly to the other party;
- (d) has been disclosed pursuant to a requirement of a governmental agency, stock exchange regulatory authority, or is required to be disclosed by operation of law and, so far as it is legally able, the receiving party has promptly notified the other party of such disclosure; or
- (e) is independently developed by the receiving party without use, directly or indirectly, of the Confidential Information received from the other party.

8.5 The Subscriber undertakes to change the Company Administrator password immediately on being granted access to the Site and the Digi-

Board Services, and to set and maintain passwords for all Named Responders. Passwords changed or set by the Subscriber shall not be disclosed to Supplier unless required in accordance with clause 5.2. The Subscriber shall be responsible for ensuring that all such passwords are set up and maintained in compliance with the Subscriber's password policy.

8.6 Each party undertakes to the other to take all such steps as shall from time to time be necessary to ensure the compliance with this Agreement, including the provisions of clause 8.1 above, by its employees, agents, independent contractors and sub-contractors and those of its respective Group Companies.

9 DATA PROTECTION

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 The Subscriber:

- (a) shall notify Supplier in writing should it wish for Supplier to process personal other than Shared Personal Data and Support Personal Data and - in such event - the parties shall first agree in writing the scope, nature, purpose and duration of the processing as well as the categories and types of personal data to be processed (which the parties agree shall form part of this agreement);
- (b) warrants that it shall not (whether directly or indirectly) otherwise provide any personal data (other than Shared Personal Data and Unshared Personal Data) to the Supplier;
- (c) and Supplier agree that, in respect of:

- (i) the Ad Hoc Personal Data, for the purposes of the Data Protection Legislation, the Subscriber is the controller and the Supplier is the processor;
- (ii) the Support Personal Data:
 - (A) the Subscriber is the controller and Supplier is the processor;
 - (B) the scope, nature and purpose of the processing is such processing as is strictly necessary for the provision of the Digi-Board Support Services in accordance with this agreement;
 - (C) the duration of the processing is for the duration of this agreement or until (if earlier) when the Subscriber requests that Supplier cease processing.

9.3 Without prejudice to the generality of clause 9.1, the Subscriber will ensure that it has all necessary consents and notices in place to enable lawful transfer of the Unshared Personal Data to Supplier for the duration and purposes of this Agreement.

9.4 Without prejudice to the generality of clause 9.1, Supplier shall, in relation to the Unshared Personal Data processed in connection with the performance by Supplier of its obligations under this agreement:

- (a) process the Unshared Personal Data only on the written instructions of the Subscriber (which shall include fulfilling the obligations on Supplier under this Agreement by providing services to the Subscriber) unless Supplier is required by the laws of any member of the European Union (including the UK should it leave the European Union) or by the laws of the European Union (including the UK should it leave the European Union) applicable to Supplier (the Applicable Laws) to process Unshared Personal Data.

Where Supplier is relying on an Applicable Law as the basis for processing Unshared Personal Data, Supplier shall promptly notify the Subscriber of this before performing the processing required by the Applicable Laws (except where such Applicable Law prohibits Supplier from so notifying the Subscriber);

- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Unshared Personal Data and against accidental loss or destruction of, or damage to, the Unshared Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting the Unshared Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to the Unshared Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process the Unshared Personal Data are obliged to keep the Unshared Personal Data confidential; and
- (d) not transfer any Unshared Personal Data outside of the EEA (except to the Subscriber, where applicable) without prior written agreement between the parties in relation such a transfer;
- (e) assist the Subscriber (at the Subscriber's cost) in responding to any request from a Data Subject and in ensuring compliance with the

Subscriber's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (f) notify the Subscriber without undue delay on becoming aware of a UPD Data Security Breach;
- (g) at the written direction of the Subscriber, delete or return the Unshared Personal Data and copies thereof to the Subscriber on termination of this Agreement (unless Supplier is required by any Applicable Law to store the Unshared Personal Data);
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and allow for and contribute to audits (at the Subscriber's cost and on reasonable prior notice and at reasonable times) by the Subscriber or the Subscriber's designated auditor; and
- (i) immediately inform the Subscriber if, in Supplier's opinion, an instruction of the Subscriber infringes (or would infringe, if followed) any Data Protection Legislation.

9.5 The Subscriber warrants that – without the prior, written agreement of Supplier – it shall not transfer (and shall not request that Supplier transfer) the Unshared Personal Data outside of the EEA unless the relevant data subjects have first given their consent to such transfer (after having been informed of the possible risks of such transfer for such data subjects due to the absence of an adequacy decision and appropriate safeguards).

For the purposes of this clause 9.5, transferring personal data outside of the EEA includes:

- a) accessing personal data from outside of the EEA;

b) disclosure of personal data to a third party outside of the EEA, including:

- i. storing personal data on servers outside of the EEA; and
- ii. granting third parties located outside of the EEA access to personal data stored within the EEA;

9.6 With regard to engaging a sub-processor, Supplier shall respect the conditions referred to in Article 28(4) of the GDPR.

9.7 Supplier confirms that it has entered into, with Ipitsi Limited, a written agreement incorporating terms which are substantially similar to those set out in this clause 9.

9.8 Supplier shall inform the Subscriber of any intended changes concerning the addition or replacement of sub-processors, giving the Subscriber the opportunity to object to such changes. Subject to Supplier's compliance with the foregoing, the Subscriber hereby grants Supplier general written authorisation to add or replace sub-processors.

9.9 As between the Subscriber and Supplier, Supplier shall remain fully liable for all acts or omissions of any third-party sub-processor appointed by Supplier pursuant to this clause 9.

9.10 Notwithstanding anything to the contrary elsewhere in this Agreement, the Supplier shall provide its services under this Agreement to:

- (a) the Subscriber and/or any Authorised Company having entered into this Agreement agrees to the sharing of personal data with Ipitsi Limited in their capacity as a Data Processor.

10 END USER CONTRIBUTIONS

The Subscriber shall procure that all End Users comply (and warrants that all End Users shall comply) with the Terms of Use.

11 INDEMNITIES

11.1 The Subscriber hereby indemnifies Supplier (and shall keep Supplier indemnified) against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Supplier arising out of, or in connection with, (in any whatsoever):

- (a) any and all threatened and/or actual claims against Supplier by End Users and/or Authorised Companies (except where such claims by an Authorised Company are pursuant to a contract directly entered into between Supplier and such Authorised Company);
- (b) a failure by the Subscriber, the Authorised Companies and/or the End Users to use the Digi-Board Services in accordance with clause 2.4 and/or to comply with any other term of this Agreement;
- (c) any breaches of the warranty contained in clause 10;
- (d) any claim or action threatened or brought against Supplier alleging that Supplier's use of the Subscriber Materials (or any part thereof) in accordance with the terms of this Agreement infringes the Intellectual Property Rights of a third party;
- (e) any breach (or any breach alleged by a third party) of any Data Protection Legislation by the Subscriber; and/or
- (f) any breach of the Sharing Agreement by the Subscriber.

11.2 Supplier hereby indemnifies the Subscriber and the Authorised Companies (and shall keep the Subscriber and the Authorised Companies indemnified) against all liabilities, costs, expenses, damages and losses

(including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Subscriber and the Authorised Companies arising out of, or in connection with, (in any way whatsoever):

- (a) any Infringement Claims (except to the extent that such Infringement Claims arise from a breach of this Agreement by the Subscriber); and/or
- (b) any breach (or any breach alleged by a third party) of any Data Protection Legislation by Supplier.

11.3 If any Infringement Claim is made (or in Supplier's reasonable opinion is likely to be made) – without prejudice to clause 11.2 – Supplier may at its sole option and expense:

- (a) procure for the Subscriber and/or the Authorised Companies the right to continue using the Site and the Digi-Board Services in accordance with the terms of this Agreement;
- (b) modify the Site and/or the Digi-Board Services so that they cease to be infringing;
- (c) replace the Digi-Board Software with non-infringing software; or
- (d) terminate this Agreement immediately by notice in writing to the Subscriber and refund all of the Subscription Fees paid by the Subscriber in relation to the period of infringement.

11.4 The indemnities in clause 11.1 and 11.2 shall not cover the indemnified party to the extent that a claim under them results from the indemnified party's negligence or wilful misconduct (including any breach of the Data Protection Legislation by the indemnified party).

11.5 Liability under the indemnities in clause 11.1 and 11.2 is conditional on the indemnified party discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against a party (i.e. the indemnified party) or – in the case of the Subscriber, against an Authorised Company (in which case, the Subscriber shall be deemed the indemnified party) – which may reasonably be considered likely to give rise to a liability under any such indemnity (a “Claim”), the indemnified party shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the indemnifying party, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior, written consent of the indemnifying party;
- (c) give the indemnifying party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the indemnifying party, so as to enable the indemnifying party and its professional advisers to examine them and to take copies (at the indemnifying party's expense) for the purpose of assessing the Claim; and
- (d) subject to the indemnifying party providing security to Supplier to Supplier's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the indemnifying party may reasonably request to avoid, dispute, compromise or defend the Claim.

11.6 If a payment due from an indemnifying party under this clause 11 is subject to tax (whether by way of direct assessment or withholding at its

source), the indemnified party shall be entitled to receive from the indemnifying party such amounts as shall ensure that the net receipt, after tax, to the indemnified party in respect of the payment is the same as it would have been were the payment not subject to tax.

11.7 Nothing in this clause 11 shall restrict or limit the indemnified party's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 11. For the avoidance of doubt, the Subscriber shall not be entitled to recover (on behalf of an Authorised Company) any losses suffered by such Authorised Company to the extent that such Authorised Company failed to mitigate the losses it suffered or incurred.

11.8 For the avoidance of doubt, liability under the indemnities in this clause 11 is limited under clause 6.2.

12 TERMINATION

12.1 Either party may terminate this Agreement at any time on written notice to the other if the other or the Authorised Companies:

- (a) is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 Business Days after receiving written notice requiring it to remedy that breach; or
- (b) 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 if made vexatiously), 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.

12.2 Termination by either party shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

12.3 On termination or expiry of this Agreement for any reason:

- (a) all rights granted to the Subscriber and the Authorised Companies under this Agreement shall cease;
- (b) the Subscriber and the Authorised Companies shall cease all activities authorised by this Agreement;
- (c) the Subscriber shall immediately pay to Supplier any sums properly due to Supplier under this Agreement, unless the Agreement has been terminated by the Subscriber pursuant to clause 12.1(a);
- (d) each party and the Authorised Companies will return to the other party or destroy all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and
- (e) each party and the Authorised Companies will erase all the other party's Confidential Information from its computer systems to the fullest extent possible (provided Supplier may keep Confidential Information contained in the Digi-Board Services to assist with re-subscription unless notified by the Subscriber in writing that this should be deleted).

13 SURVIVORSHIP

The following clauses shall survive termination of this Agreement: 1; 5.5; 6; 7; 8; 9; and 11 to 24 (inclusive).

14 FORCE MAJEURE

No party shall be liable to the other, or to the Authorised Companies, for any delay or non-performance of its obligations under this Agreement arising from a Force Majeure Event. For the avoidance of doubt, nothing in this clause 12 shall excuse the Subscriber from any payment obligations under this Agreement.

15 ASSIGNMENT AND SUBCONTRACTING

15.1 Either party shall be entitled to novate its rights and obligations under this Agreement at any time, subject to the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15.2 Without limitation, consent from Supplier to assignment by the Subscriber may be conditional on:

- (a) Supplier being satisfied there is no material risk of the infringement of Supplier's Intellectual Property Rights; and/or
- (b) the assignee agreeing to pay all additional charges for training and support and maintenance arising by virtue of the transfer; and/or
- (c) the assignee entering into a contract with Supplier agreeing to be bound by the terms and conditions of this Agreement as if it were the original Subscriber.

15.3 Supplier shall have the right to sub-contract its obligations under this Agreement to such other organisation and/or individual as it may notify to the Subscriber in writing from time to time.

16 ANTI-BRIBERY

16.1 Neither party, nor the Authorised Companies, shall engage in any activity, practice or conduct which would constitute or result in an offence by

either party under applicable anti-bribery laws or regulations, including the Bribery Act 2010 (the "Bribery Act").

16.2 Each party shall devise, implement and enforce its own written anti-bribery policies and procedures constituting adequate procedures under the Bribery Act.

16.3 Each party shall produce to the other party a copy of such written policies and procedures within seven days of receiving a written request from the other party.

17 WAIVER

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

18 SEVERABILITY

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

19 AMENDMENTS

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.

20 THIRD PARTY RIGHTS

20.1 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

21 NO PARTNERSHIP OR AGENCY

21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22 NOTICES

22.1 Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by first-class mail or email, provided that emails are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed emails shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this clause 22.

22.2 Unless stated otherwise, the provisions of this clause 19 shall not apply to day-to-day communications between the parties relating to this Agreement, which communications may take the form of emails.

23 ENTIRE AGREEMENT

23.1 This Agreement supersedes all prior agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement.

23.2 The Subscriber agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Subscriber shall have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into this Agreement.

24 GOVERNING LAW AND JURISDICTION

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.

This Agreement has been entered into by the Subscriber by checking the box 'Accept Terms and Conditions' on the Digi-Board website.

Schedule 1

TERMS OF USE

End Users shall treat all user login details for the Digi-Board services as confidential. End Users shall not:

- disclose any user login details for the Digi-Board services to any third party; or
- allow any other person (including other End Users) to log into and/or use their account for the Digi-Board services.

Where there is a print 'button' in or on (as applicable) the Digi-Board software, End Users may use that button to print information from the Digi-Board software. The resulting print-outs shall be used solely for the internal use of (as applicable) the Subscriber or Authorised Company. End Users shall not:

- print or download any other information from the Digi-Board software;
- use any other content in, on and/or from (as applicable) the Digi-Board software and/or the Digi-Board services for any other commercial purpose without our prior, written consent.

End Users shall retain all copyright notices in such print-outs as well as any copies thereof.

Content Standards

The content standards below apply to Contributions. End Users' shall ensure that their Contributions comply with these content standards (which apply to each part of any Contribution as well as to its whole) in both letter and spirit.

All Contributions shall:

1. be accurate (where it states facts);
2. be genuinely held (where it states opinions); and
3. comply with the law applicable in England and Wales and in any country from which it is posted, contributed, inputted and/or uploaded.

Contributions shall not:

1. be defamatory of any person;
2. be obscene, offensive, hateful or inflammatory;
3. promote sexually explicit material;
4. promote violence;
5. promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
6. infringe any copyright, database right or trade mark of any person;

7. be likely to deceive any person;
8. breach any legal duty owed to any person. For example, a contractual duty or a duty of confidence;
9. promote, encourage (or otherwise induce the commission, preparation or instigation of) any unlawful or illegal activity;
10. be in contempt of court;
11. be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety;
12. be likely to harass, upset, embarrass, alarm or annoy any other person;
13. impersonate any person, or misrepresent your identity or affiliation with any person; or
14. give the impression that it emanates from Digi-Board (if this is not the case);
15. contain any advertising or promote any services or web links to other sites.

Annex A

Digi-Board Subscription

Access to the Digi-Board Services requires payment of the prevailing Subscription Fee notified on the Digi-Board website at www.thedigiboard.co.uk at the time of purchase.

For the avoidance of doubt, payment of the Subscription Fee entitles the named Company Administrators one-time access on a pay as you go basis to the Question Banks.

Upon closure of the Question Banks by Supplier, and not before closure, Company Administrators have the facility to print and download all available stored information created by the use of the Question Banks. Access to the stored information will only be made available to Company Administrators.

As the nature of a governance review is periodic, upon closure of the Question Banks, the stored information will be retained to have available a period-on-period comparison (e.g. year-on-year) under a new Subscription Fee.

The named Company Administrator may request in writing to the Supplier the deletion of all stored information at anytime for which there is no charge. The Supplier will delete all stored information within 21 days of receiving the request in writing. Once the stored information is deleted there is no opportunity to recover it.

Annex B

Digi-Board Support Services

Authorised Companies may access free support during the Term of a Subscription in any of the following ways:

1. by email to support@thedigiboard.co.uk
2. by reference to FAQs available at the Site
3. for urgent matters refer to the Contact Us page on the Site

Outside the Term of a Subscription, Supplier reserves the right to charge for its Support Services.