

Multi-Agency Data Sharing as a Service

Terms and Conditions

G-Cloud 15



MASTER TERMS AND CONDITIONS

MTC EFFECTIVE DATE:	
CAPITA ENTITY NAME: Capita Business Services Ltd	CLIENT ENTITY NAME: [xxxxxxxxxxx]
CAPITA COMPANY NUMBER: 02299747	CLIENT COMPANY NUMBER:
ADDRESS: 65 Gresham Street, London, England, EC2V 7NQ	ADDRESS: 65 Gresham Street, London, England, EC2V 7NQ
The parties have signed this MTC on the date last written below:	
SIGNED:	SIGNED:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms used in the MTC and not otherwise defined in a Schedule or SoW have the following meanings:

"Agreement" has the meaning given to it under Clause 2.2 (Scope of Agreement and Precedence).

"Applicable Law" means the laws of England and Wales and the European Union and any other laws, regulations, or regulatory policies which apply to the provision of the Services, including all applicable laws, statutes, regulations and codes relating to anti-bribery and anticorruption in England and Wales, subject to any change of law provision specified within a Schedule or SoW.

"Background IPR" means any and all IPR owned by or licensed to either party and developed or obtained before or independently of the Agreement.

"Capita" means the Capita entity signing this MTC or its Group member as referred to in Clause 2.1, as relevant to the Agreement.

"Client" means the client entity signing this MTC or its Group member as referred to in Clause 2.1, as relevant to the Agreement.

"Client Materials" means all documents, information, items and materials in any format, whether owned by Client or a third party, as provided by Client to Capita in connection with the Agreement.

"Client Personal Data" means personal data made available to Capita by, or on behalf of, Client and processed by Capita in connection with the Agreement.

"Confidential Information" means all information and personal data which is confidential or proprietary in nature; relates to the Disclosing Party's business affairs (including any financial or technical data, trade secrets, know-how, IPR and/or derivative data or output) which the Disclosing Party directly or indirectly discloses, or makes available to the Receiving Party by whatever means before, on or after the date of the Agreement; and/or any other information clearly identified as being, or which ought reasonably be considered to be, confidential.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force in the United Kingdom including the Data Protection Act 2018, UK GDPR (as defined in sections 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) and the Privacy and Electronic

Communications Regulations 2003 (SI 2003/2426) as amended. The terms "data controller", "data

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processor", "data subject" and "personal data" are as defined in the Data Protection Legislation.

"Disclosing Party" means a party (or its Group member) who discloses Confidential Information to the Receiving Party.

"Fees" means fees and related charges which Capita charges for the provision of the Services as set out in the SoW.

"Force Majeure Event" means any circumstance or cause beyond a party's reasonable control including acts of God, flood or other natural disaster, epidemic, pandemic, terrorist attack, civil commotion or riots, war or armed conflict, fire, explosion, contamination (including chemical or biological), loss of access to electricity, power or telecommunications, shortages of materials or equipment, supply chain failures, any labour or trade dispute, strikes, industrial action or lockouts and any change in law or due to action taken by a government or public authority (including quarantine measures).

"Foreground IPR" means any IPR that arises, is created or developed by Capita for Client as part of or in connection with the Services, including any such IPR subsisting in any product, process, deliverables, documents, works, designs and/or services.

"Group" means, for a company, that company, its subsidiary undertakings or any parent undertakings of that company and any subsidiary undertaking of a parent undertaking of that company (as defined in section 1162 of the Companies Act 2006). Each being a party's "Group member".

"IPR" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks (registered or unregistered), domain names, goodwill, right to sue for passing off, design rights (registered or unregistered), rights in computer software, database rights, trade secrets, know-how, right to preserve confidentiality of information, any other industrial and intellectual property rights, including all applications for, renewals or extensions of, such rights and all similar or equivalent rights or protections which are recognised, subsist or will subsist, now or in the future, in any part of the world.

"Losses" means any losses, demands, claims, actions, proceedings, damages, payments, costs (including legal and other professional costs), expenses or other liabilities.

"MTC" means the terms and conditions as set out in these Master Terms and Conditions.

"MTC Effective Date" means the date first written above.

"Receiving Party" means a party or Group member, who receives Confidential Information from the Disclosing Party.

"RPI" means Retail Price Index as calculated and published by the Office for National Statistics (or its replacement index).

"Schedule(s)" means the schedule(s) incorporated into the Agreement under a SoW which set out additional terms and conditions that relate to the Services.

"Services" means any products and/or services as set out in the SoW and provided by Capita to Client.

"SoW" means the order form that sets out or details the nature, scope, delivery plan, service level agreements and charges relating to the Services to be supplied by Capita.

"SoW Effective Date" means the date when the parties both sign the SoW, or some other date as otherwise expressly stated in the SoW.

"Term" has the meaning given in Clause 3 (Term).

"Third Party Processors" means (a) the Capita operations and delivery centres in Poland, India and/or South Africa; (b) those third party processors explicitly identified in a Schedule and/or SoW; and/or (c) any other third party processor as Capita may notify Client from time to time in writing.

"TUPE" means The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

"VAT" means value added tax and / or any similar or analogous sales tax imposed in any jurisdiction (including, but not limited to, any value added tax charged or imposed pursuant to Council Directive 2006/112/EC or any national legislation implementing such Directive).

"Working Day" means any day other than a Saturday, Sunday or public holidays in England.

1.2 In the Agreement: (a) references to Clauses are to the clauses of the MTC and references to paragraphs are to the paragraphs in each Appendix, Schedule and/or SoW; (b) a reference to a statute, regulation, code or such similar instrument includes any subsequent amendment or replacement; (c) words following "including" or "include" shall be illustrative and without limitation; and (d) the Agreement shall bind and inure to the benefit of each party's successors and permitted assigns.

2. SCOPE OF AGREEMENT AND PRECEDENCE

2.1 Each party and their Group members may enter into SoWs which are governed by this MTC and the relevant Schedule(s). Where a party's Group member enters into a SoW, any references to "Capita" or "Client" in this MTC and the relevant Schedule(s) or a term referring to "Capita" or "Client" in this MTC and the relevant Schedule(s) shall be substituted for such member and "parties" or "party" construed accordingly.

2.2 Each SoW signed by the parties shall incorporate and be governed by this MTC and the relevant Schedule(s); and shall, in each instance, form a separate and binding contract between the parties ("Agreement"). Accordingly, one or more separate Agreements may be created, each governed by the same MTC and Schedule.

2.3 In the event of any conflict arising between the SoW, Schedules and this MTC, the descending order of precedence will be (save and to the extent expressly permitted by this MTC): (a) this MTC; then (b) Schedules; and then (c) the SoW.

2.4 Unless otherwise expressly agreed, if any inconsistency arises between any diagrams and text, the text shall take precedence.

3. TERM

This MTC shall commence on the MTC Effective Date and, unless terminated at an earlier date by operation of law or as otherwise provided for in the Agreement, shall continue with full force and effect during the term of any SoW. The term of each SoW ("Term") shall be as set out in the SoW or, where not set out in the SoW, as stated in the Schedule.

4. FEES

4.1 The Fees and expenses shall be paid by Client in accordance with this Clause 4 (Fees), the SoW and/or the relevant Schedule(s). Unless the SoW otherwise expressly provides, where the Fees under that SoW are payable on:

- (A) a "time and materials" (e.g. hourly, daily, or FTE-based rate) basis, then such Fees shall become payable monthly in arrears;
- (B) a "fixed fee" (e.g. one-off or monthly fee) basis, then each fixed Fee shall become payable in advance of the period to which such fixed Fee relates; and/or
- (C) a "recurring fee" (e.g. on a consumption based recurring monthly fee) basis, then each recurring Fee shall accrue and become payable from the first day of the month following the date the relevant Services are made available by Capita until they are terminated pursuant to the SoW.

4.2 Unless otherwise agreed in a SoW, Client shall pay any expenses reasonably incurred by Capita in performing its duties under the Agreement monthly in arrears.

4.3 Invoicing:

- (A) unless otherwise expressly set out in a Schedule or the SoW (i) Capita shall invoice Client for the Fees and expenses in order to enable payment in accordance with Clause 4.1 (Fees); and (ii) Client shall pay each invoice in full within 30 days from the date of such invoice ("Invoice Payment Date"). Client shall not be entitled to set-off or make any deduction in respect of any sums due to Capita under the Agreement.
- (B) if Client wishes to dispute an invoice, it shall notify Capita within 10 days of the date of such invoice, otherwise the invoice will be deemed to be accepted by Client as undisputed and valid.

4.4 Subject to Clause 4.3(B) (Fees), if any sum payable under the Agreement is not paid by Client by the Invoice Payment Date then (without prejudice to Capita's other rights and remedies), Capita reserves the right to:

- (A) within 14 days following notification by Capita of non-payment of Fees by the Client by the Invoice Payment Date, suspend the provision of the Services until Client has paid in full all outstanding sums plus any applicable interest, without incurring liability to Client for such suspension; and/or
- (B) charge interest on such overdue sums on a daily rate of 4% per annum above the then base rate of Barclays Bank plc, from the Invoice Payment Date until the date of actual payment, whether before or after judgment.

4.5 All Fees and expenses payable by Client shall be in GB Pounds Sterling. The Fees and expenses do not include any amount arising in respect of VAT (or other applicable taxes), which, if applicable, shall be payable by Client and added to such Fees and expenses at the rate in force at the time that they become due. Client agrees:

- (A) to use commercially reasonable efforts to do all such acts and things and to sign all such documents as will enable Client to minimize the amount of any withholding tax obligation;

- (B) in the event there is no applicable double taxation agreement or treaty, or if an applicable double taxation agreement or treaty reduces but does not eliminate such withholding or similar tax, to pay any withholding tax directly to the appropriate government entity;
- (C) to provide Capita with a tax certificate evidencing such payment or any tax exemption on which Client wishes to rely; and
- (D) where Client is obliged by law to withhold or deduct any portion of the Fees and/or expenses, that Capita shall be entitled to receive from Client such amounts as will ensure that the net receipt (after deductions or withholdings) to Capita in respect of the Fees and/or expenses is the same as it would have been were the payment not subject to the deductions or withholdings.

4.6 Unless otherwise provided in the SoW: (a) Capita may increase the Fees on an annual basis on the anniversary of the SoW Effective Date by a percentage equal to the average percentage increase in the RPI during the 12 month period preceding the date of notice of the adjustment, provided that the rate of increase shall always be 0% or greater; and (b) the first price increase shall take effect on the first anniversary of the SoW Effective Date. Any increase shall be notified to Client in writing at least 60 days prior to the date any fee adjustment takes effect.

5. OBLIGATIONS ON THE PARTIES

5.1 Save as otherwise set out in a Schedule or SoW, Capita shall:

- (A) provide the Services pursuant to all Applicable Laws;
- (B) provide the Services to Client using reasonable skill and care and in a professional manner;
- (C) use reasonable endeavours to meet any performance, delivery or milestone dates as may be specified in a SoW. Client acknowledges that such dates shall be estimates only and time for performance or delivery by Capita shall not be of the essence; and
- (D) observe health and safety and security requirements for Client premises or locations, as shall be set out in a SoW,

In each case other than where Capita is acting in accordance with Client's instructions.

5.2 Client shall:

- (A) comply with and use the Services in accordance with (i) all operating specifications and instructions provided to it by Capita in respect of the Services; and (ii) all Applicable Laws;
- (B) if a Group member is permitted to access any of the Services, ensure that such Group member complies with all provisions of the Agreement applicable to Client as if they were its own;
- (C) co-operate with and respond to Capita (its subcontractors and/or consultants) in a timely and efficient manner in all matters relating to the Agreement;
- (D) provide Capita (its subcontractors and/or consultants), without charge, access to Client's premises, data, equipment, facilities, Client Materials and any health and safety and security requirements, as Capita may reasonably require;
- (E) ensure that Client's equipment (including IT and networks connections) ("Client Infrastructure") is in good working order, available, maintained and suitable for the purposes intended under the SoW; and conforms to all relevant standards or requirements. Client will be responsible for all delays, issues or Losses arising from Client Infrastructure;
- (F) obtain and maintain all necessary and applicable licences and consents; and comply with all Applicable Laws, to enable Capita to provide the Services; and

- (G) keep, maintain and insure (where applicable) Capita's equipment pursuant to Capita's instructions under the SoW.

5.3 All warranties, conditions and other terms implied by statute or common law are excluded to the extent permitted by law. Further, Client accepts that it (or its Group member) shall assume sole responsibility and entire risk:

- (A) as to the suitability, selection and use of the Services to meet its (or its Group member's) requirements or business needs; and
- (B) in respect of the results obtained and/or conclusions drawn from the use and application of the Services to its business.

5.4 If Capita's performance under the Agreement is hindered, prevented or delayed by any default of Client in complying with its obligations under the Agreement then, without prejudice to its other rights or remedies:

- (A) Capita shall be granted an extension of time to perform its obligations equal to the period of delay caused by such act or omission;
- (B) any failure by Capita to deliver its obligations in respect of the affected part of the Services shall not constitute a breach of the Agreement;
- (C) if Capita has incurred any unmitigable loss or expense as a direct result of a delay due to such Client default, Capita shall, in addition to the extension allowed pursuant to Clause 5.4(A), be entitled to compensation to place Capita in the same position it would have been in, had such Client default not occurred. Capita shall provide Client with any information Client may require in order to assess the validity of any claim to compensation by Capita; and
- (D) Client shall pay Capita its reasonable charges for the implementation and operation of any agreed workaround solution or remedy, based on the costs reasonably and directly incurred by Capita.

5.5 Unless otherwise provided in the SoW, the parties shall each appoint a contract manager for each Agreement with authority to legally bind it. A party may replace its contract manager with reasonable prior written notice to the other.

6. PERMISSIONS AND RESTRICTIONS

6.1 Client shall use the Services pursuant to the terms of the Agreement. Unless otherwise set out in a Schedule or SoW, neither Client nor its Group members shall be permitted to:

- (A) copy or modify any part of the Services;
- (B) use, disclose or provide access to the Services on a 'whitelabelled' basis or otherwise; or assist any third-party to develop or sell a solution to compete with the Services;
- (C) use any IT facilities, tools or communications networks provided by Capita other than to receive and properly use the Services;
- (D) merge, decompile, disassemble, or otherwise translate or derive any trade secrets and/or source code in any software components which are embodied in the Services (including changing file names of or reverse engineering any software) except as expressly permitted by law or regulation to achieve interoperability with other technology; and
- (E) transfer or sublicense any materials, components or aspects of and/or other rights in the Services.

6.2 Client acknowledges and agrees that:

- (A) the Services may contain proprietary and/or third-party software components and/or materials that are subject to additional or different licence and notice terms; and

- (B) in such case, Client shall (and shall, where applicable, procure that its Group members) comply with all such relevant and applicable licence and notice terms identified on the applicable SoW and/or Schedule or as may otherwise be notified by Capita to Client from time to time.

7. INTELLECTUAL PROPERTY

7.1 The parties acknowledge and agree that:

- (A) all Background IPR is and shall remain the exclusive property of the party owning it or that of its licensor. Capita acknowledges and agrees that Client (or its licensor) owns the IPR in Client Materials; and
- (B) save where otherwise stated in a SoW or Schedule, where one party owns any Background IPR which the other party needs to legitimately access and/or use for the purposes of the Services, then such party grants to the other party a non-exclusive licence to use its Background IPR solely for the purposes of the Services and for the duration of the Agreement.

7.2 The parties acknowledge and agree that, unless otherwise expressly provided for in a SoW or Schedule:

- (A) any and all Foreground IPR shall vest in and be owned by Capita (or, where applicable, a Group member or any third-party licensor from whom the right to use it has derived);
- (B) Capita grants Client, a worldwide, non-exclusive, royalty free licence for the period of the Agreement to use (but not adapt, modify, enhance or create any derivatives of) the Foreground IPR for its internal business purposes only and to the extent required by Client to benefit from the Services. Client is not permitted to sub-licence, assign or otherwise transfer rights granted to it under such licence to any third-party (except to a Group member where permitted in a SoW, and only where such member is intended to directly benefit from the Services);
- (C) where Client acquires any title, by operation of law, under the Agreement, Client unconditionally and irrevocably assigns to Capita all IPR that vest in:
 - (1) the Foreground IPR; and
 - (2) any new adaptations, modifications and/or enhancements made to any Background IPR belonging to Capita, by way of present assignment of future IPR, with full title guarantee, without encumbrance or restriction and without charge to Capita. Client shall undertake all activities required by Capita to formalise and perfect such assignment; and

7.3 Client will not remove or conceal any proprietary rights notice in the Services and will include such notices on any copy it is permitted to make by Capita.

7.4 Each party warrants to the other party that the receipt and use of the party's Background IPR (including Client Materials) by the other party (and/or its Group members where specified in a SoW)) in accordance with the Agreement shall not infringe the IPR or other rights of any third party.

7.5 If a claim is made, or in Capita's reasonable opinion is likely to be made, by a third party for IPR infringement against Client or Capita in respect of the Services, Capita may at its sole option and expense:

- (A) procure the right for Client to continue to use the aspect of the Services which is subject to such claim; or
- (B) replace or modify, or procure the replacement or modification of such infringing part of the Services, provided that:
 - (1) the performance and functionality of the replaced or modified item is at least equivalent to that of the original;
 - (2) the replaced or modified item does not have an adverse effect on the provision of Services;

- (3) there is no additional cost to Client; and
- (4) the terms of the Agreement apply to the replaced or modified Services; or

- (C) if the options set out in Clauses 7.5(A) (Intellectual Property) and 7.5(B) (Intellectual Property) cannot be accomplished on commercially reasonable terms, then Capita may terminate Client's rights to use the affected part of the Services. Save as set out in a Schedule, if Capita exercises the option set out in this Clause 7.5(C) (Intellectual Property), then Capita will, as applicable, refund any unused prepaid Fees for the affected part of the Services.

7.6 Subject to Clauses 7.7 (Intellectual Property) and 7.8 (Intellectual Property), each party shall indemnify and hold the other party (and Group members set out in a SoW) harmless against all direct Losses arising out of or in connection with any infringement (actual or alleged) of a third party's IPR which results from the other party's use of that party's IPR in connection with the Services, in each case in accordance with the Agreement.

7.7 The IPR indemnity obligation on:

- (A) Capita under Clause 7.6 (Intellectual Property) shall not apply to any Losses which result from Client's (or its Group member's or contractor's):
 - (1) combination of all or part of the Services with other products or technology not supplied by, or instructed to do so by Capita;
 - (2) failure to use the Services (or aspects thereof) in accordance with the relevant specification, requirements and/or operating parameters;
 - (3) modification of all or part of the Services other than by Capita or its subcontractors;
 - (4) instructions, requirements or specifications if and to the extent that Capita's compliance with Client's requirements or specifications resulted in the infringement;
 - (5) use of any obsolete, superseded or unsupported versions of the Services once advised by Capita in writing to cease use or to use a replacement version;
 - (6) breach of any licence terms and conditions in relation to the use and/or enjoyment of the Services as notified to Client by Capita; or
- (B) Client under Clause 7.6 (Intellectual Property) shall not apply to any Losses to the extent that such Losses arise as a result of modifications made to Client IPR by Capita or breach by Capita other than in accordance with Client's instructions, of requirements or specifications of any licence terms and conditions in relation to the use and/or enjoyment of Client IPR as notified to Capita by Client.

7.8 The indemnification obligation in Clause 7.6 (Intellectual Property) is conditional upon the indemnified party:

- (A) providing the indemnifying party with prompt notice of the details of any IPR claim;
- (B) not making any admission or taking steps to settle any claim without the indemnifying party's prior written approval;
- (C) if the indemnifying party so requests it, transferring control and defence of the claim to the indemnifying party; and
- (D) providing such reasonable assistance and co-operation (at the indemnifying party's cost) as required by the indemnifying party.

7.9 Unless otherwise set out in a SoW or Schedule, Client acknowledges and accepts that Capita (or its Group members and subcontractors), may collect and use information related to Client's use of the Services (or a part of the Services) for customer and technical support, to monitor compliance with the Agreement and to improve existing and/or recommend additional or alternative products or services to Client. To the extent that any personal data is collected and processed by Capita in accordance with this Clause 7.9 (Use Data), such personal data will be processed in accordance with Capita's privacy policy.

7.10 Publicity and Branding:

- (A) Other than as set out in Clause 7.10(B) (Intellectual Property), as required for the provision of the Services, internal purposes or by law or regulation, neither party shall make any press announcements, publicise the Agreement or use the other party's name, brand, trade mark or derivatives of them in any promotion, marketing or otherwise without the prior written consent of the other party (not to be unreasonably withheld or delayed).
- (B) Capita is permitted to include Client's name on Capita's customer list and make general references to the relationship between Capita and Client and the Services for marketing and/or publicity purposes.

8. EXPORT CONTROL AND SANCTIONS

Client will not use or provide access to the Services to any Group member or third party that may breach any applicable export control or economic sanctions laws and regulations for any jurisdiction. Client warrants, represents and undertakes (as a continuing obligation) that neither it nor any Group member is affiliated with a specially designated or sanctioned entity under any such laws and that, in any transaction relating to Capita, it will not involve sanctioned parties (or use accounts at sanctioned banks).

9. TERMINATION

9.1 Save as otherwise set out in a Schedule or SoW, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (A) the other party either commits an irremediable material breach of the Agreement or, if capable of remedy, the other party fails to remedy that breach within a period of 30 days from the date of being notified in writing to do so;
- (B) the other party begins any negotiations to reschedule its debt or enters into any arrangements with its creditors;
- (C) the other party suspends, or threatens to suspend, payment of its debts or is unable, admits to being unable or is deemed unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (D) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (E) a petition is filed, an effective resolution is passed, or court order made for the winding up of the other party (other than for the purposes of solvent amalgamation or reconstruction);
- (F) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (G) a receiver, administrative receiver or administrator is appointed.

9.2 The rights and remedies provided under the Agreement are in addition to any rights or remedies provided by law.

9.3 Save as otherwise set out in a Schedule or SoW, Capita may terminate the Agreement with immediate effect by giving written notice to Client if Client fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

9.4 Nothing shall prevent a party from seeking immediate injunction or similar remedy from a court of competent jurisdiction to prevent or restrain breaches of the Agreement.

9.5 On termination or expiry of the relevant Agreement:

- (A) Client shall immediately pay to Capita all outstanding unpaid invoices (plus any accrued interest), in respect of the Services provided. Where Capita has not submitted an invoice, Capita may submit a valid invoice to Client and such invoice shall be payable immediately by Client on receipt; and
- (B) upon written request, the other party will promptly return, delete or destroy that party's materials (including Client Materials), data, content, documentation and Confidential Information.

9.6 Notwithstanding the generality of Clause 9.5 (Termination), each party may retain a copy of such materials only to the extent required to do so to comply with Applicable Laws and/or to support the enforcement or defence of a party's rights under the Agreement.

9.7 Termination of all or any part of the Agreement will not affect a party's rights, remedies, obligations or liabilities that have accrued up to the date of expiry or termination. The following clauses will survive termination: Clauses 1 (Definition and Interpretation), 4.1 (Fees), 4.2 (Fees), 4.5 (Fees), 5.3 (Obligations of the Parties), 6 (Permissions and Restrictions), 7 (Intellectual Property), 9.5 (Termination), 9.7 (Termination), 10 (Confidentiality), 11 (Protection of Personal Data), 12 (Limitation of Liability), 14 (Non-Solicitation) and 16 (General), along with any others that by their nature should survive.

10. CONFIDENTIALITY

10.1 The Receiving Party will hold the Disclosing Party's Confidential Information in confidence and will not disclose or permit the disclosure of any part of the Confidential Information to any third party except (a) to any Group members, consultants and advisors (including accountants and lawyers) bound by, or otherwise protected by legal privilege or confidentiality and non-disclosure commitments substantially similar to those contained in the Agreement ("Representatives"); and/or (b) to the extent required to comply with Applicable Law, provided that the Receiving Party (i) provides prompt notice (if legally permissible) to the Disclosing Party so that the Disclosing Party can seek a protective order or other appropriate remedy; and (ii) limits any such disclosure to the extent of the legal requirement and the disclosed information will remain Confidential Information despite such disclosure.

10.2 The Receiving Party shall be liable for the actions or omissions of its Representatives in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party.

10.3 These obligations of confidentiality do not apply to information which:

- (A) is or becomes generally available to the public (without breach by the Receiving Party) or a Receiving Party's Group;
- (B) becomes known to the Receiving Party or Group members on a non-confidential basis via a third party;
- (C) was lawfully in the prior possession of the Receiving Party or its Group;
- (D) was independently developed by the Receiving Party or its Group without use or reference to Confidential Information; or
- (E) the Disclosing Party agrees is not confidential.

10.4 Upon termination of the Agreement, the Receiving Party and its Representatives will cease all use of the Disclosing Party's Confidential Information and return, delete or destroy it pursuant to 9.5 (Consequences of Termination).

10.5 The Receiving Party's obligations of confidentiality shall apply to any Confidential Information of the Disclosing Party while any copy of it remains in the Receiving Party's possession or control, and thereafter for a period of two years.

10.6 Nothing in this Clause 10 (Confidentiality) shall prevent either party from using, in the course of its normal business, any techniques, ideas or know-how gained during the performance of the Agreement provided that such use will not result in a disclosure of the other party's Confidential Information or an infringement of its IPR.

10.7 The parties acknowledge and agree that in the event the Disclosing Party's Confidential Information is specified in a SoW to include a third party's information which is confidential or proprietary in nature and such information is to be treated as Confidential Information for the purposes of this Agreement, the provisions set out in the SoW shall take precedence over this Clause 10 (Confidentiality) in respect of such third party's Confidential Information only.

11. PROTECTION OF PERSONAL DATA

11.1 The parties shall comply with all applicable requirements of the Data Protection Legislation. This Clause 11 (Protection of Personal Data) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 The parties shall comply with the terms set out in the Appendix (Protection of Personal Data) and where applicable, any additional terms in the SoW.

12. LIMITATION OF LIABILITY

12.1 The limits on liability under Clauses 12.2 (Limitation on Liability) and 12.3 (Limitation on Liability) shall not apply to:

- (A) death or personal injury caused by negligence;
- (B) fraud or fraudulent misrepresentation;
- (C) Client's liability to pay the Fees and other sums due to Capita including expenses;
- (D) any obligations of a party pursuant to Clause 10 (Confidentiality) other than as expressly set out in a Schedule or SoW;
- (E) the indemnity set out in Clause 7.6 (Intellectual Property), other than as expressly set out in (i) Clause 7.7 (Intellectual Property); or (ii) a Schedule or SoW;
- (F) the extent otherwise expressly set out in the Schedule or SoW; and/or
- (G) any other matter for which it would be unlawful to exclude or attempt to exclude its liability.

12.2 Subject to Clause 12.1 (Limitation of Liability), neither party shall be liable to the other for any:

- (A) indirect, special or consequential Losses arising in connection with the Agreement;
- (B) loss of profits (except with respect to the Fees or other Capita charge specified in the SoW), loss of sales, anticipated savings or goodwill, loss of business opportunity or contracts in each case whether direct or indirect, even if such Losses could have been foreseen.

12.3 Subject to Clauses 12.1 (Limitation of Liability) and 12.2 (Limitation of Liability), the total aggregate liability of each party for all other Losses, whether arising from tort (including negligence), indemnity, breach of contract or otherwise in respect of each Agreement, shall not exceed an amount equal to the mean of the annual Fees paid or payable by Client during the Term (or then current term).

12.4 Without prejudice to its other rights or remedies, any delay or nonperformance by Capita of its obligations under the Agreement will be excused to the extent it is caused by acts or omissions of Client, its Group member, consultants or subcontractors.

12.5 The parties shall each be subject to a general duty to mitigate their Losses.

13. FINANCIAL CRIME

Each party shall, and shall procure that each Group member shall, comply with all Applicable Laws relating to financial crime including the

Bribery Act 2010, Companies Act 2006, Fraud Act 2006, Proceeds of Crime Act 2002, Criminal Finances Act 2017, Theft Act 1968 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Breach of this Clause 13 (Financial Crime) shall be deemed to be a material breach under Clause 9.1(A) (Termination).

14. NON-SOLICITATION

Client shall not solicit or entice away, employ or attempt to employ an employee or consultant of Capita providing the Services under a SoW at any time during and up to 12 months following the expiry or termination of that SoW.

15. ASSIGNMENT

Neither party shall deal with, novate, assign, transfer, mortgage, charge or delegate any of its rights and obligations (each a "Transfer") under the Agreement without the other party's prior written consent (not to be unreasonably withheld), save that Capita may without Client's prior consent Transfer any of its rights and obligations under the Agreement to a Group member. For the avoidance of doubt and in accordance with Clause 2.2 (SCOPE OF AGREEMENT and Precedence), in the event a Transfer of an Agreement takes place, the MTC and each relevant Schedule shall continue in full force and effect during the term of any other SoW in place between Client (or any member of its Group) and Capita (or any member of its Group) that does not form part of the Agreement that is the subject of the Transfer.

16. GENERAL

16.1 No amendment, variation or modification to the:

- (A) MTC or Schedule shall be valid unless: (i) in the written form of a variation agreement as Capita shall issue to Client; and (ii) until duly executed by each party's authorised representative; and
- (B) SoW shall be valid unless: (i) the parties follow the change control process and documentation as provided in the Schedule ("CCN"); and (ii) until such CCN is duly executed by each party's authorised representative.

16.2 A waiver of any right or remedy under the Agreement or at law shall only be effective if given to the other party in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.3 Notices under the Agreement shall be in writing and be delivered by hand, pre-paid first-class post, next Working Day delivery service or email to the address under the relevant SoW. Neither party (or Group member) shall use email for serving on the other party any notices alleging or specifying a breach of the Agreement or to serve any proceedings or documents involved with any legal action. Notices shall be deemed to be served if: (a) by hand, when delivered; (b) by pre-paid first-class post or next Working Day delivery service, at 9am on the next Working Day after posting; or (c) if email, at the time of transmission.

16.4 No party shall be liable to the other party for any delay or failure to perform under the Agreement due to the occurrence of a Force Majeure Event, provided that the affected party shall: (a) promptly notify the other party in writing; (b) use all reasonable endeavours to mitigate during such occurrence; and (c) resume performance of its obligations as soon as reasonably possible. Where the affected party is prevented or delayed by a Force Majeure Event for at least 90 days, then the nonaffected party may terminate the Agreement upon serving 30 days' written notice to the affected party.

16.5 If TUPE applies in relation to the Services, the parties' TUPE obligations shall be as set out in the relevant Schedule and/or SoW.

- 16.6 Nothing in the Agreement is intended to create a partnership or any legal relationship that would impose liability on one party for the act or failure to act of the other party.
- 16.7 The Agreement contains the entire understanding between the parties and supersedes all prior agreements, understandings, negotiations, proposals and other representations, verbal or written regarding its subject matter. Nothing in this Clause 16.7 (General) shall operate to exclude any liability for fraudulent misrepresentation, fraudulent misstatement or fraud.
- 16.8 The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999. The rights of the parties to rescind
or vary the Agreement are not subject to the consent of any other person.
- 16.9 The Agreement and any contractual and non-contractual disputes
arising out of it shall be governed and construed by the laws of England.

The courts of England shall have exclusive jurisdiction to settle any such dispute or claim, except that each party shall be entitled to seek injunctive or other relief in any jurisdiction where a breach of the Agreement is threatened to occur or has occurred.

APPENDIX DATA PROTECTION

1. Protection of Personal Data

The parties acknowledge and agree that if Capita processes any personal data for Client (or a Group member) under the Agreement:

- (A) Client is the data controller and Capita is the data processor for the purposes of the Data Protection Legislation;
- (B) the data processing provisions set out in the relevant Schedule and/or SoW shall apply as between the parties; and
- (C) where applicable, the SoW shall set out the scope, purpose and duration of processing by Capita, and the types of personal data and categories of data subject.

2. Client-Provided Data

Client will ensure that it:

- (A) collects and discloses all Client Personal Data to Capita in accordance with Data Protection Legislation when using the Services, including when accessing any Capita systems or portals as may be provided to Client under the Agreement; and
- (B) has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to Capita for the duration and purposes of the Agreement so that Capita may lawfully use, process and transfer the personal data in accordance with the Agreement on Client's behalf.

3. Processing Obligations

Capita shall, in relation to any Client Personal Data processed in connection with the performance by Capita of its obligations under the Agreement:

- (A) process such personal data only on the written instructions of Client unless Capita is otherwise required by Applicable Law and/or the Data Protection Legislation ("Data Laws") to process such personal data. Where Capita is relying on Data Laws as the basis for processing personal data, Capita shall notify Client of this in a timely manner before performing such processing unless such Data Laws prohibit Capita from so notifying Client;
- (B) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data appropriate to the harm that might otherwise result, having regard to the state of technological development and the cost of implementing and maintaining any measures (including, as appropriate, pseudonymisation and/or encryption of such personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services);
- (C) not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
 - (1) Client or Capita has provided appropriate safeguards in relation to the transfer;
 - (2) the data subject has enforceable rights and effective legal remedies;
 - (3) Capita provides an adequate level of protection to any transferred personal data in accordance with the Data Protection Legislation; and
 - (4) with respect to the processing of the personal data, Capita complies with the reasonable instructions as notified to it in advance by Client;
- (D) reasonably assist Client (at Client's cost), in responding to any data subject requests and complying with its obligations under the Data

Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (E) notify Client without undue delay on becoming aware of a personal data breach or if, in the opinion of Capita, Client's instruction may give rise to an infringement or infringes the Data Protection Legislation;
- (F) at the written direction of Client, delete or return personal data and copies thereof to Client on termination of the Agreement unless required by law to store the personal data; and
- (G) maintain complete and accurate records and information to demonstrate its compliance with Clause 11 (Protection of Personal Data) of the MTC and this Appendix (Data Protection) and allow for audits by Client or its designated auditor.

4. Third Party Processors

4.1 Client consents to:

- (A) the appointment of and transfer of personal data to the Third Party Processors, provided that such transfer shall comply with paragraph 3(C) (Processing Obligations) of this Appendix (Data Protection); and
- (B) the appointment by Capita of any subcontractors whether identified under the SoW or otherwise as third-party processors of personal data under the Agreement.

4.2 Capita confirms that it will enter into a written agreement with any appointed third-party processors appointed which reflect the requirements of the Data Protection Legislation.

4.3 As between Client and Capita, Capita shall remain responsible for all acts or omissions of any third-party processor appointed by Capita as its subcontractor pursuant to this Appendix (Data Protection).

5. Variations

5.1 Where required by law, Capita may, at any time on not less than 30 days' notice to Client, revise this Appendix (Data Protection) by replacing it with any applicable data controller to data processor standard clauses or similar terms forming part of an applicable certification scheme.

5.2 Capita may, at any time on no less than 30 days' notice to Client, make such changes required to this Appendix to comply with any changes to Data Protection Legislation.