

Capita Tendering AI

Terms and Conditions

G-Cloud 15



[customer]

-and-

Capita Business Services Ltd

Agreement for the Supply of Software as a Service and Associated Services

THIS AGREEMENT is made on _____

BETWEEN:

- 1) [●] a company registered in [●] with number [●] whose registered office is at [●] ("**Customer**"); and
- 2) **Capita Business Services Ltd**, a company registered in England and Wales with number 02299747 whose registered office is at First Floor, 2 Kingdom Street, Paddington, London, W2 6BD ("**Capita**");

each a "**Party**" and together the "**Parties**".

1. DEFINITIONS AND INTERPRETATION

- 1.1 Capitalised terms used in this Agreement have the following meanings:

"**Agreement**" means this agreement, including its Schedules and Annexes.

"**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 Cloud Services, including all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption in England and Wales.

"**Cloud Services**" means the Capita-hosted software as a service set out in Schedule 1 and made available or provided by Capita (or its licensors) to the Customer and accessed remotely by the Customer over the internet.

"**Commencement Date**" means [●], notwithstanding the date of this Agreement.

"**Confidential Information**" means all information 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 this Agreement; and/or any other information clearly identified as being, or which ought reasonably to be considered to be, confidential.

"**Contract Year**" means a calendar year beginning on the Commencement Date and each anniversary thereof.

"**Customer Data**" means all data, documents, information, items and materials in any format, whether owned by Customer or a third party, as provided by Customer to Capita in connection with this Agreement.

"**Data Protection Legislation**" means the following legislation to the extent applicable from time to time: (a) national laws implementing the Privacy and Electronic Communications Regulations (EC Directive) 2003; (b) the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018, the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations (EC Directive) 2003; and (c) any laws or regulations that replace or supersede the legislation referred to in (a) and (b) from time to time. The terms "**data controller**", "**data processor**" and "**data subject**" are as defined in the Data Protection Legislation.

"Delivery Plan" means the timetable (if any) set out in Schedule 1 for the provision of the Cloud Services.

"Disclosing Party" means a Party who discloses Confidential Information to the Receiving Party.

"Fees" means fees and related charges which Capita charges for the provision of the Cloud Services as set out in Schedule 1.

"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).

"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"**.

"High Risk Activities" means any use of any Software or Cloud Services in a system or device where a failure could reasonably be expected to cause death, personal injury, or serious property or environmental damage. These include activities that require fail-safe or fault-tolerant performance to keep people or property safe. Examples include (but are not limited to): critical infrastructure or industrial control systems; medical or life-support equipment; transportation systems (e.g. aircraft, trains, vehicles), navigation or communication systems used for safety; power plants, nuclear facilities and weapons systems.

"Initial Term" means the initial term of this Agreement as defined in Clause 2.

"IPR" means patents, utility models, rights to inventions, copyright and related 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.

"Personal Data" means any personal data (as such term is defined in the Data Protection Legislation) processed as part of the Cloud Services.

"Published Documentation" means the then-current user and technical documentation made available or provided by Capita (and its licensors) with the Cloud Services or Software or otherwise made generally available by Capita (or its licensors) in printed, electronic, or online form.

"Receiving Party" means a Party who receives Confidential Information from the Disclosing Party.

"Restricted International Transfer of Personal Data" means a transfer of Personal Data from (a) a country which has Data Protection Legislation which imposes restrictions on extra-territorial transfers of Personal Data; (b) to a country which does not provide an adequate level of protection for Personal Data as required by the Data Protection Legislation of the country of export.

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

"Sanctions Lists" means: (a) for the UK, the UK Sanctions List maintained by the Foreign, Commonwealth & Development Office and the Consolidated List of Financial Sanctions Targets in the UK maintained by HM Treasury; (b) for the European Union, the consolidated list of persons, groups and entities subject to EU financial sanctions, and the list at Annex XIX of Regulation (EU) No. 833/2014; and (c) for the United States, the list of Specially Designated Nationals and Blocked Persons and the Sectoral Sanctions Identifications List, both maintained by the Treasury Department's Office of Foreign Assets Control.

"Software" means any software program(s) identified in Schedule 1 or otherwise made available to the Customer and owned or licensed by Capita, in object code format, under this Agreement as may be required for Customer to access the Cloud Services.

"Specification" means the functional and/or technical requirements specification (as applicable) for the Cloud Services as set out in Schedule 1.

"Standard Contractual Clauses" means the international data transfer agreement issued by the UK Information Commissioner under section 119A(1) of the Data Protection Act 2018.

"Term" means the duration of this Agreement as determined in accordance with Clause **Error! Reference source not found.**

"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 this Agreement: (a) references to clauses are to the clauses of this Agreement and references to paragraphs are to the paragraphs in each Schedule and/or Annex; (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) this Agreement shall bind and inure to the benefit of each Party's successors and permitted assigns.
- 1.3 In the event of any conflict arising between this Agreement, any Schedules and/or Annexes, the descending order of precedence will be (save and to the extent expressly permitted by this Agreement): (a) this Agreement (excluding the Schedules); then (b) Schedules; and then (c) Annexes.

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

2. TERM

- 2.1 This Agreement shall commence on the Commencement Date and, unless terminated at an earlier date by operation of law or as otherwise provided for in this Agreement, shall continue for a period of twelve months (the “**Initial Term**”). Thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”), unless either Party notifies the other Party of termination, in writing, at least ninety days before the end of the Initial Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period.

3. FEES

- 3.1 Customer shall pay Capita for the Cloud Services at the rate or the Fees specified in Schedule 1 or, if no rate or Fee is specified, Capita's standard rates then in effect.
- 3.2 Unless otherwise specified, Customer shall pay any expenses reasonably incurred by Capita in performing its duties under this Agreement monthly in arrears.
- 3.3 Invoicing:
- (A) unless otherwise expressly set out in Schedule 1 (i) Capita shall invoice Customer for the Fees and expenses at the end of each calendar quarter; and (ii) Customer shall pay each invoice in full within 30 days from the date of such invoice (“**Invoice Payment Date**”). Customer shall not be entitled to set-off or make any deduction in respect of any sums due to Capita under this Agreement.
 - (B) if Customer 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 Customer as undisputed, valid and payable.
- 3.4 Subject to Clause 3.3(B) (Fees), if any sum payable under this Agreement is not paid by Customer 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 Customer by the Invoice Payment Date, suspend the provision of the Cloud Services until Customer has paid in full all outstanding sums plus any applicable interest, without incurring liability to Customer for such suspension;
 - (B) condition future purchases of Cloud Services on shorter payment terms; and/or
 - (C) 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.
- 3.5 All Fees and expenses payable by Customer 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 Customer and added to such Fees and expenses at the rate in force at the time that they become due. Customer agrees:

- (A) to use commercially reasonable efforts to do all such acts and things and to sign all such documents as will enable Customer 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 Customer wishes to rely; and
- (D) where Customer is obliged by law to withhold or deduct any portion of the Fees and/or expenses, that Capita shall be entitled to receive from Customer 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.

3.6 The Fees and charges set out in this Agreement are based on Applicable Law in force at the Commencement Date. Capita reserves the right, acting reasonably, to increase the Fees and charges by a reasonable amount, reflecting its increased costs of providing the Cloud Services, if there is a change to Applicable Law after the Commencement Date.

3.7 Unless otherwise provided in Schedule 1 Capita may increase the Fees on an annual basis on 1st April in each year 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 or, where less than 12 months, the period since the Commencement Date, provided that the rate of increase shall always be 0% or greater. Capita shall provide reasonable notice in writing of any increase to Customer.

4. DELIVERY

4.1 Cloud Services are delivered to the Customer upon the provisioning of access of such Cloud Services to the Customer by Capita (or any licensors).

4.2 Software is delivered upon electronic availability or licence key delivery to the Customer. Unless otherwise agreed by the Parties in writing, the Customer is responsible for installation and configuration of the Software and maintaining a compatible environment that meets the Published Documentation with respect to such Software.

5. LICENCE AND ACCESS

5.1 During the term of this Agreement, Capita grants the Customer a non-exclusive, non-transferable, non-assignable and non-sublicensable:

- (A) right to access and use the Cloud Services and its Published Documentation, and
- (B) (where relevant) a licence to install and use the Software in object code form within the Customer's environment;

solely for internal business purposes and in accordance with the applicable Published Documentation and this Agreement.

- 5.2 If any member of the Customer's Group is a permitted recipient of the Cloud Services under this Agreement, the Customer may allow such members to use the Software and/or Cloud Services in accordance with this Agreement and the applicable Published Documentation, provided that the Customer is responsible and liable to Capita for each member's compliance with the same.
- 5.3 The Customer is responsible for all activity carried out through its Cloud Services account. The Customer shall provide Capita with all information and reasonable assistance needed to deliver the Cloud Services and/or Software and to enable the Customer's use of them. The Customer shall promptly notify Capita of any unauthorised access, suspected security breach, or unauthorised use, copying, or distribution of the Cloud Services, Software, Published Documentation or Customer Data. The Customer is responsible for any use by it or its Users in a manner that is inconsistent with the terms of this Agreement.

6. RESTRICTIONS

- 6.1 Except as permitted by this Agreement, the Customer shall not, (and shall not permit any user or third party to), in respect of any Software or Cloud Services:
- (A) licence, sublicense, resell, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of it, or otherwise commercially exploit it, or make it available to any third-party;
 - (B) modify, make derivative works of, copy, reproduce, republish, adapt, translate, reverse engineer, decompile or disassemble it (except where permitted by law for interoperability and only after giving prior written notice to Capita);
 - (C) access or use it to build, support, or enhance (directly or indirectly) any competing product, solution or service;
 - (D) access or use it for any illegal, fraudulent or unauthorised purpose;
 - (E) remove, alter or obscure any proprietary notices on, or contained within, it;
 - (F) bypass or interfere with its licence controls, usage limits, security features or technical protections;
 - (G) impersonate any person, misrepresent identity, or provide false information to create or access an account;
 - (H) attempt to gain unauthorised access, perform denial-of-service attacks, introduce malware, or otherwise harm Capita, the Cloud Services, Software or other users;
 - (I) access or use it for benchmarking, performance testing, competitive analysis, or similar purposes without Capita's prior written consent
 - (J) use it in any way that breaches applicable law, infringes third-party rights, or violates this Agreement; or

(K) use it for any High-Risk Activities unless expressly agreed in writing by Capita.

7. SUPPORT AND MAINTENANCE

- 7.1 Capita (or its licensors) will provide support and maintenance for the Cloud Services and/or Software during the term of this Agreement and in accordance with the applicable Capita support policy made available to the Customer on request. Support will be delivered remotely during Capita's standard business hours stated in such support policy and may include remote assistance, access to online resources, error diagnosis, and the deployment of fixes, patches, updates or other changes that Capita (or its licensors) makes generally available. Capita (or its licensors) may release updates or make changes to the Cloud Services or Software at any time. Nothing in this Agreement obliges Capita (or its licensor) to deliver bespoke enhancements or new features.
- 7.2 For Cloud Services, Capita will use reasonable efforts to keep the Cloud Services available and to address reported issues, but does not guarantee uninterrupted or error-free operation.
- 7.3 For Software, Capita will use reasonable efforts to correct reproducible errors, but the Customer must install updates and maintain a supported environment in line with Capita's (or its licensors') system requirements.
- 7.4 Support and maintenance does not include issues caused by:
- (A) the Customer's systems, networks, integrations, or third-party products or services;
 - (B) unauthorised modifications or use of the Software or Cloud Services contrary to this Agreement or Published Documentation;
 - (C) failure to install required updates or maintain required system specifications; or
 - (D) any cause outside Capita's reasonable control.
- 7.5 Capita may charge the Customer additional fees for:
- (A) any work performed outside of Capita's standard support hours;
 - (B) on-site services; or
 - (C) support for issues outside the scope of standard support and maintenance.
- 7.6 Capita (or its licensors) may update, modify, or improve the Cloud Services or Software at any time.

8. USAGE

- 8.1 The Customer will keep complete and accurate records of its use of any Software and/or Cloud Services and, on Capita's request, provide a system-generated usage report ("**Usage Report**"). The Customer will provide such Usage Report within 30 days of Capita's request.

- 8.2 If the Software or Cloud Services are unable to generate a Usage Report, the Customer will maintain accurate manual usage records and provide a written usage report within 30 days of Capita's request.
- 8.3 Capita will request a Usage Report no more than once per year, unless Capita has a reasonable basis to suspect non-compliance. Capita will act reasonably and endeavour to avoid unnecessary disruption to the Customer's business.
- 8.4 Capita (or its auditor) may audit the Customer's compliance with this Agreement (remotely or on-site) on 10 Working Days' notice during normal business hours. Capita will use reasonable endeavours to minimise disruption to the Customer's business.
- 8.5 If any Usage Report, or audit identifies over-use or unlicensed use of Software or Cloud Services, the Customer shall:
 - (A) promptly remedy the same, for example, by purchasing any additional licences or subscriptions required to achieve compliance with this Agreement at Capita's then-current prices or paying any out-of-compliance additional fees; and
 - (B) pay Capita's reasonable and properly incurred audit costs.

9. WARRANTIES

- 9.1 For 90 days from the date of delivery, Capita warrants that any Software will substantially conform to its Published Documentation when properly installed and used in a supported environment in accordance with this Agreement and the applicable Published Documentation.
- 9.2 For the duration of the Cloud Services, Capita warrants that: (a) it will provide such Cloud Services with reasonable skill and care; and (b) the Cloud Services will perform substantially in accordance with their associated Published Documentation.
- 9.3 The warranties in Clauses 9.1 and 9.2 will not apply to:
 - (A) any open source or third party components in such Software or Cloud Services; or
 - (B) any non-Capita modifications, misuse or unsupported environments.
- 9.4 Except as expressly stated in this Agreement, Capita provides the Software and/or Cloud Services (including the Published Documentation) "AS IS". All other warranties and conditions of any kind (express, implied, or statutory, including any warranty as to merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, uninterrupted, completely secure, error-free, free of viruses, compatibility, meeting the Customer's business requirements or error-free operation) are disclaimed to the extent allowed by applicable law. The Customer is solely responsible for its use of any output or results obtained from such Software and Cloud Services.
- 9.5 Capita is not responsible for any issues related to the performance, operation or security of the Software and/or Cloud Services to the extent such issue arises from Customer Data, third party components or third party services (other than those provided by Capita's subcontractors).
- 9.6 The Customer acknowledges and agrees that internet transmissions are never fully secure, and Capita cannot guarantee that Customer Data sent over the internet or through systems outside

Capita's reasonable control will be free from interception, interruption, delays, or errors. The Customer is responsible for protecting its own networks, servers, applications, and access credentials. Capita is not responsible for delays, delivery failures, loss of data, or other harm caused by issues inherent in internet and electronic communications outside Capita's reasonable control.

10. INTELLECTUAL PROPERTY

- 10.1 Software and Cloud Services are licensed, not sold. Capita (or its licensors) retain all right, ownership and interest (including all IPR) in and to, such Software and Cloud Services (and any derivative works of the same). The Customer may not exercise any right, title, and interest in and to the same except for the limited access and usage rights granted to the Customer in this Agreement.
- 10.2 If the Customer provides any comments, suggestions, ideas or other feedback relating to the Cloud Services and/or the Software ("**Feedback**"), the Customer agrees that:
- (A) Capita (and its licensors) shall own all right, title and interest (including all IPR) in and to such Feedback immediately upon its creation;
 - (B) Capita (and its licensors) may use, copy, modify, disclose, create derivative works from, or otherwise exploit such Feedback for any lawful business purpose without notice to, attribution to, payment to, or further consent from the Customer; and
 - (C) all such Feedback shall be deemed Capita's Confidential Information (and that of its licensors), and not the Customer's Confidential Information.
- 10.3 Software and Cloud Services may contain, or otherwise interface with, or rely on, third-party components subject to their own licence terms. Such third party terms govern the relevant third party component only. This Agreement governs any Capita components. All ownership and IPR in and to such third party components vest in the third party owner of the same. Capita may need to update, change or modify the Software or Cloud Services as a result of a change in, or unavailability of, such third party component.

11. CUSTOMER DATA

- 11.1 The Customer warrants that:
- (A) it has the legal right and all necessary consents to provide any Customer Data to Capita;
 - (B) it has provided all required notices and obtained all necessary consents or authorisations (including from Users) for the Customer's use of the Software and/or Cloud Services and for Capita's processing of Customer Data, including any Personal Data; and
 - (C) it will comply with all applicable laws and regulations relating to the collection, use, processing and transfer of Customer Data to Capita.
- 11.2 The Customer is solely responsible for: (a) the accuracy, quality, legality, integrity, reliability and appropriateness of all Customer Data; and (b) any security vulnerabilities, issues or harm arising

from Customer Data, including any malware or harmful code contained within it. The Software and/or Cloud Services rely on Customer Data provided by the Customer, and Capita (and its licensors) is not responsible for the content of Customer Data or for correcting or modifying it, except where required by law.

- 11.3 The Customer retains all ownership and rights (including IPR) in and to the Customer Data, except as otherwise stated in this Agreement. The Customer grants Capita (and its licensors) a non-exclusive, royalty-free right and licence to access and use Customer Data as necessary during the term of this Agreement so Capita can provide the Cloud Services and comply with its obligations under this Agreement.
- 11.4 Without limiting clauses 14 and 15 and Schedule 2, Capita has the perpetual right to use anonymized, aggregated, statistical data ("**Statistical Data**") derived from the operation of the Cloud Services, and nothing in this Agreement shall be construed as prohibiting Capita from utilizing the Statistical Data for business and/or operating purposes, provided that Capita does not share with any third party Statistical Data which reveals Confidential Information, Customer Data, Personal Data or the identity of the Customer.
- 11.5 To the extent the Customer discloses or transmits Customer Data to a third party (other than a subcontractor of Capita or any member of its Group), Capita is no longer responsible for the security or confidentiality of such Customer Data outside of Capita's control.

12. EXPORT CONTROL AND SANCTIONS

- 12.1 The Customer warrants, represents and undertakes (as a continuing obligation) that neither it nor any of its Group members is on, or is owned or controlled by a Party appearing on, any Sanctions Lists.
- 12.2 The Customer will not:
 - (A) use any of the Cloud Services or Software in a way that would breach, or cause Capita to breach, any Applicable Laws relating to sanctions or export control.
 - (B) provide access to the Cloud Services or Software to any of its Group members or a third party if such provision would breach any Applicable Laws relating to sanctions or export control.
 - (C) provide access to the Cloud Services or Software to any person appearing on any Sanctions Lists, nor to an entity owned or controlled by such a person.
 - (D) provide access to the Cloud Services or Software to any of its Group members or a third party located in, operating in, established in, or ordinarily resident in any country/territory targeted by comprehensive economic sanctions of the United States of America administered by the United States Treasury Department's Office of Foreign Assets Control.

13. TERMINATION AND SUSPENSION

- 13.1 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (A) the other Party either commits an irremediable material breach of this 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 over the assets of the other Party.

13.2 Capita may suspend access to, or use of, any Software and/or Cloud Services if:

- (A) undisputed Charges are overdue by more than 7 days;
- (B) the Customer breaches clauses 5 (Licence and Access), 6 (Restrictions) or 12 (Export Control and Sanctions) of this Agreement;
- (C) suspension is necessary to protect Capita's (and its licensors') systems, or IPR or Customer Data or to mitigate a credible cyber risk or threat to the security and integrity of the same; or
- (D) Capita (or its licensor) reasonably believes that the volume of Customer Data being transmitted or processed through the Cloud Services or Software is significantly greater than the average use or may cause degradation of the Cloud Services or Software for the Customer or other customers; or
- (E) required by law or regulator.

13.3 Capita will give the Customer advance notice of any suspension under Clause 13.2 where reasonably possible and allowed by law. If the Cloud Services or Software support it, Capita will try to limit the suspension to only the part affected by the issue. Capita will also use reasonable efforts to restore such Cloud Services or Software as soon as the problem has been resolved. During any suspension, Capita will make Customer Data (as it existed at the time of suspension) available to the Customer upon request. Any suspension under Clause 13.2 does not relieve the Customer of its obligation to pay the Charges.

- 13.4 The rights and remedies provided under this Agreement are in addition to any rights or remedies provided by law.
- 13.5 Capita may terminate this Agreement with immediate effect by giving written notice to Customer if Customer fails to pay any amount due under this 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.
- 13.6 Nothing in this agreement shall oblige Capita to act in any way contrary to Applicable Laws relating to sanctions or export controls. Capita may terminate this Agreement with immediate effect by giving written notice to Customer in the event that performance of any aspect of this Agreement becomes prohibited by Applicable Laws relating to sanctions or export controls.
- 13.7 Nothing in this Agreement shall prevent a Party from seeking immediate injunction or similar remedy from a court of competent jurisdiction to prevent or restrain breaches of this Agreement.
- 13.8 On termination or expiry of this Agreement:
- (A) the Customer's access to Cloud Services and licence to Software will end and the Customer will cease use, (if applicable) uninstall, and destroy or return all copies (and certify destruction on request) of such Software;
 - (B) the Customer shall immediately pay to Capita all outstanding unpaid invoices (plus any accrued interest), in respect of the Cloud Services provided. Where Capita has not submitted an invoice, Capita may submit a valid invoice to Customer and such invoice shall be payable immediately by Customer on receipt; and
 - (C) upon written request by a Party, the other Party will promptly return, delete or destroy that Party's materials (including Customer Data), data, content, documentation, Personal Data (in accordance with Clause 15) and Confidential Information.
- 13.9 Notwithstanding the generality of Clause 13.8 (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 this Agreement and, subject to using reasonable endeavours to delete them, such copies of materials as are held in backup or disaster recovery systems.
- 13.10 Termination of all or any part of this 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), 3.1 (Fees), 3.2 (Fees), 3.5 (Fees), 6 (Restrictions), 7 (Warranties), 10 (Intellectual Property), 13.8 (Termination), 13.9 (Termination), 13.10 (Termination), 14 (Confidentiality), 15 (Protection of Personal Data), 16 (Limitation of Liability), 19 (Dispute Resolution) and 20 (General), along with any others that by their nature should survive.

14. CONFIDENTIALITY

- 14.1 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 this 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.

14.2 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.

14.3 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.

14.4 Upon termination of this 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 Clause 13.8(B) (Termination).

14.5 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.

14.6 Nothing in this Clause 14 (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 this Agreement provided that such use will not result in a disclosure of the other Party's Confidential Information or an infringement of its IPR.

14.7 Where Capita processes any Personal Data as data processor for Customer, the terms of Clause 15 and Schedule 2 shall govern such processing, and the Personal Data shall not be considered Confidential Information for the purposes of this Clause 14.

15. PROTECTION OF PERSONAL DATA

15.1 The parties shall comply with all applicable requirements of the Data Protection Legislation when processing Personal Data under this Agreement. This Clause 15 (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.

15.2 The parties shall comply with the terms set out in Schedule 2 (Protection of Personal Data).

16. LIMITATION OF LIABILITY

16.1 Nothing in this Agreement shall operate to exclude or limit the liability of either Party for:

- (A) death or personal injury caused by negligence;
- (B) fraud or fraudulent misrepresentation;
- (C) Customer's liability to pay the Fees and other sums due to Capita including expenses;
- (D) breach of any obligations of a Party pursuant to Clause 14 (Confidentiality); and/or
- (E) any other matter for which it would be unlawful to exclude limit, or attempt to exclude or limit, its liability.

16.2 Neither Party shall be liable to the other for any:

- (A) indirect, special or consequential Losses arising in connection with this Agreement; or
- (B) loss of profits (except with respect to the Fees or other Capita charge specified in Schedule 1), 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.

16.3 Subject to Clauses 16.1 (Limitation of Liability) and 16.2 (Limitation of Liability) and 16.4 (Limitation of Liability), the total liability of each Party to the other for all other Losses, whether arising from tort (including negligence), indemnity, breach of contract, statutory duty or otherwise in respect of this Agreement, shall not exceed the following amounts:

- (A) in any Contract Year, [the lesser of [●] and] an aggregate amount equal to the Fees paid by Customer in the 12 months immediately preceding the date of the relevant claim giving rise to a Loss; and
- (B) during the Term of this Agreement, [the lesser of [●] and] an aggregate amount equal to 150% of the Fees paid by Customer in the 12 months immediately preceding the date of the relevant claim giving rise to a Loss.

{Drafting Note: Lower limits (if applicable) to be negotiated on a case-by-case basis}

16.4 Without prejudice to its other rights or remedies, any delay or non-performance by Capita (or the Capita personnel) of its obligations under this Agreement will be excused to the extent it is caused (directly or indirectly) by (i) acts or omissions of Customer, its Group member, consultants or subcontractors or (ii) acts or omissions of Capita which it has taken (or omitted to take) as a result of the Customer, its Group members, consultants or subcontractors requesting Capita to do so.

16.5 The Parties shall each be subject to a general duty to mitigate their Losses.

17. FINANCIAL CRIME

Each Party 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 17 (Financial Crime) shall be deemed to be a material breach under Clause 13.1(A) (Termination).

18. ASSIGNMENT

Neither Party shall deal with, novate, assign, transfer, mortgage, charge or delegate any of its rights and obligations under (each a "**Transfer**") this Agreement without the other Party's prior written consent (not to be unreasonably withheld), save that Capita may, without Customer's prior consent, subcontract to any third party and may Transfer any of its rights and obligations under this Agreement to a Group member.

19. DISPUTE RESOLUTION

19.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in this Agreement and except in relation to any claim by Capita for any unpaid amounts (including Fees) due under this Agreement, the Parties shall follow the procedure set out in this Clause:

- (A) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the [Account Manager] of Capita and [Insert title] of Customer shall attempt in good faith to resolve the Dispute;
- (B) if the [Account Manager] of Capita and [INSERT TITLE] of Customer are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of Capita and [SENIOR OFFICER TITLE] of Customer who shall attempt in good faith to resolve it;
- (C) if the [SENIOR OFFICER TITLE] of Capita and [SENIOR OFFICER TITLE] of Customer are for any reason unable to resolve the Dispute within 20 Working Days of it being referred to them, the Parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties within 10 Working Days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a Party must give notice in writing ("**ADR notice**") to the other Party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR; and
- (D) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the Parties cannot agree within 10 Working Days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and
- (E) unless otherwise agreed between the parties, the mediation will start no later than 20 Working Days after the date of the ADR notice.

19.2 Neither Party may commence any court proceedings in relation to the whole or part of the Dispute until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to

issue proceedings is not prejudiced by a delay. This Clause 19.2 shall not prevent either Party seeking injunctive or interim relief prior to the conclusion of the mediation.

- 19.3 If for any reason the Dispute is not resolved within 30 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England in accordance with Clause 20 (General).

20. GENERAL

- 20.1 No amendment, variation or modification to this Agreement shall be valid unless in the written form of a variation agreement and until duly executed by each Party's authorised representative.
- 20.2 A waiver of any right or remedy under this 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.
- 20.3 Notices under this Agreement shall be in writing and be delivered by hand, pre-paid first-class post or next Working Day delivery service to the address specified at the start of this Agreement. Notices shall be deemed to be served if: (a) by hand, when delivered, or (b) by pre-paid first-class post or next Working Day delivery service, at 9am on the next Working Day after posting.
- 20.4 Neither Party shall be liable to the other Party for any delay or failure to perform under this 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 non-affected Party may terminate this Agreement upon serving 30 days' written notice to the affected Party.
- 20.5 Nothing in this 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.
- 20.6 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 20.6 (General) shall operate to exclude any liability for fraudulent misrepresentation, fraudulent misstatement or fraud.
- 20.7 This 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 this Agreement are not subject to the consent of any other person.
- 20.8 This 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 this Agreement is threatened to occur or has occurred.

SIGNED BY the duly authorised representatives of the Parties on the dates stated below.

The duly authorised signatory for and on behalf of
the [Customer Name]

The duly authorised signatory for and on behalf of
Capita Business Services Ltd



Print Name

Position

Signature

Date of Signature

Print Name

Position

Signature

Date of Signature

SCHEDULE 1

CLOUD SERVICES, [SOFTWARE] AND FEES

Cloud Services Description

[to be completed]

Software

[if relevant]

Fees

In this Schedule:

“**Completed Transaction**” means a Transaction where the System has generated an evaluation of the tender responses by the bidders.

“**System**” means the Capita Tendering AI application described in the Cloud Services Description above.

“**Transaction**” means any two-stage evaluation of a procurement exercise involving an initial down-selection and full tender submission, or their equivalents.

Cloud Services under this Agreement are charged by Capita to the Customer on the basis of usage by the Customer. Fees are applied based on the type of Transactions a Customer processes using the System.

Fees will be charged to the Customer for each Completed Transaction on the basis of the size of the Transaction measured according to the Tier Description and at the fixed prices both set out in Table 1 below. The Customer will be invoiced at the end of each month for each Transaction which has become a Completed Transaction during that month.

Table 1:

Transaction Tier	Tier Description	Price per Transaction
Small	First round:	£1,700

	- No more than 7 evaluation questions; and - No more than 15 responses (i.e. no more than 15 bidders invited) Second round: - No more than 12 evaluation questions; and - No more than 5 responses (i.e. no more than 5 bidders through the first round) Overall: - No more than 668,500 words processed	
Medium	First round: - No more than 12 evaluation questions; and - No more than 25 responses (i.e. no more than 25 bidders invited) Second round: - No more than 15 evaluation questions; and - No more than 5 responses (i.e. no more than 5 bidders through the first round) Overall: - No more than 1,245,000 words processed	£2,600
Large	First round: - No more than 15 evaluation questions; and - No more than 50 responses (i.e. no more than 50 bidders invited) Second round: - No more than 15 evaluation questions; and - No more than 5 responses (i.e. no more than 5 bidders through the first round) Overall: - No more than 5,295,000 words processed	£6,750

Where a Transaction exceeds any of the criteria for a “Large” transaction set out in Table 1, the Customer will be treated (for the purposes of the calculation of Fees) as having entered into a further Transaction (or Transactions) and shall pay additional Fees calculated in accordance with the tier descriptions and

prices set out in Table 1 based on the amounts by which the criteria are exceeded.

Example 1

If 6,500,000 words are processed in a Completed Transaction, the Customer will be treated as having completed a “Large” Transaction and a “Medium” Transaction.

Example 2

If 11,800,000 words are processed in a Completed Transaction, the Customer will be treated as having completed two “Large” Transactions and a “Medium” Transaction.

For tenders processed through the System which are not Transactions (as defined), such as those involving multiple negotiation rounds, Capita shall determine the price payable for the use of the Cloud Services on the basis of the volume of data processed in handling evaluation questions and responses using the tiers and prices set out in Table 1 above. For the purposes of this paragraph, a “round” is the evaluation by the Customer of a series of documents submitted as part of an individual stage of a procurement exercise. For example, if a Customer asks several suppliers to provide responses to a requirement, and then asks down-selected suppliers to provide additional responses, this will count as two rounds.

For the delivery of any services additional to the Cloud Services (including, by way of example, procurement and commercial support services, tender development and sourcing strategy) the day rates set out in Table 2 below will apply. Day rates are exclusive of VAT, and exclusive of any travel expenses.

Table 2

Grade	Day Rate
Associate Consultant	£530
Consultant	£650
Senior Consultant	£795
Principal Consultant	£920
Senior Principal Consultant	£1,020
Managing Consultant	£1,150
Market Partner	£1,300
Director	£1,500

Price Review

Without prejudice to clause 3.7, all prices set out in this Schedule 1 may be amended by Capita eighteen months after the Effective Date of the Framework Contract RM1557.15 G-Cloud 15 between the Supplier and The Minister for the Cabinet Office represented by its executive agency the Crown Commercial Service.

SCHEDULE 2

PROTECTION OF PERSONAL DATA

1. Data Protection

- 1.1 Capita and Customer will comply with Data Protection Legislation when processing Personal Data under this Agreement.
- 1.2 The scope of the processing carried out by Capita under this Agreement is as set out in the Annex to this Schedule 2.
- 1.3 Capita confirms that, when acting as processor for Customer in relation to Personal Data, Capita shall:
 - (A) only process Personal Data on the documented instructions of Customer (as set out in, or varied from time to time in accordance with, this Agreement, and which shall include the provision of the Cloud Services) unless required to process that Personal Data for other purposes by Applicable Law. Where such a requirement is placed on Capita it shall provide prior notice to the Customer unless the relevant law prohibits the giving of notice on important grounds of public interest;
 - (B) inform Customer if, in its opinion, Customer's instructions would be in breach of Data Protection Legislation;
 - (C) provide reasonable assistance (taking into account the nature of the processing undertaken by Capita) to Customer to respond to requests from individuals exercising their rights under Data Protection Legislation;
 - (D) promptly notify Customer if it receives a request from an individual attempting to exercise their rights under Data Protection Legislation; and
 - (E) provide reasonable assistance (taking into account the nature of the processing undertaken by, and information available to, Capita) to Customer to conduct a data protection impact assessment (and any related consultations) where required under Data Protection Legislation;and Customer shall reimburse Capita's costs in providing assistance under paragraph (C) and/or 0 above.
- 1.4 At the request of Customer, Capita shall make available to Customer all information necessary to demonstrate Capita's compliance with paragraphs 1 to 0 of this Schedule 2 when processing Personal Data ("**Documentary Evidence of Compliance**"). Capita shall allow Customer to review such Documentary Evidence of Compliance (either itself or using a reputable auditor nominated by Customer and approved by Capita (such approval not to be unreasonably withheld or delayed)) in order to audit Capita's compliance under paragraphs 1 to 0 of this Schedule 1.

1.5 On termination of this Agreement and at the option of Customer, Capita shall promptly return or delete any Personal Data and certify in writing that it has done so. Without prejudice to any other provisions of this Agreement, Capita may retain a copy of Personal Data where required by Relevant Law but must delete Personal Data when that obligation ceases to apply. Notwithstanding the foregoing, Capita shall only be required to use reasonable endeavours to delete copies of Personal Data held in backup or disaster recovery systems.

1.6 Customer acknowledges and agrees that provision of the Cloud Services by Capita may involve Restricted International Transfer(s) of Personal Data. At the request of Capita, Customer shall enter into Standard Contractual Clauses with such third parties as Capita reasonable specifies, completed in such manner as Capita may reasonably specify.

2. **Data Security**

2.1 Capita shall implement appropriate technical and organisational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access. That shall include:

- (A) ensuring any of its employees or agents or other persons to whom it provides access to Personal Data are obliged to keep it confidential;
- (B) the use of pseudonymisation and encryption of Personal Data, where appropriate;
- (C) measures to ensure the ongoing confidentiality, integrity, availability and resilience of Capita's systems and services, where appropriate;
- (D) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident, where appropriate;
- (E) a process for regularly testing, assessing and evaluation the effectiveness of technical and organisational measures for ensuring the security of the processing of Personal Data; and
- (F) providing reasonable assistance (taking into account the nature of processing undertaken by Capita) to Customer to comply with its own data security obligations under Data Protection Legislation (and Customer shall reimburse Capita's costs in providing this assistance).

2.2 Capita shall notify Customer without undue delay should it become aware of a security breach leading to the accidental or unauthorised loss, alteration or disclosure of Personal Data.

3. **Use of Sub-Processors**

3.1 Customer provides a general authorisation to Capita to engage sub-processors to process Personal Data. Capita shall provide Customer with a list of those sub-processors. Capita shall give Customer prior notice of any intended additional to or replacement of those sub-processors.

3.2 Capita shall ensure that it has a written contract with any sub-processors it engages to process Personal Data. That contract must impose obligations on the sub-processor at least equivalent to those set out in paragraphs 1 to 0 of this Schedule 2.

4. **Customer Provided Data**

Without prejudice to paragraph 0 of this Schedule 2, Customer will ensure that it:

- (A) collects and discloses all Personal Data to Capita in accordance with Data Protection Legislation when using the Cloud Services, including when accessing any Capita systems or portals as may be provided to Customer under this 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 this Agreement so that Capita may lawfully use, process and transfer the Personal Data in accordance with this Agreement on Customer's behalf.

ANNEX

Data Processing Activities

Scope, nature and purpose of the processing	[●] Insert one or two lines summarising the Services provided by Capita to Customer. Ensure that this covers all intended purposes for the processing activity. The nature of the processing will include such activities as collection, recording, organising, structuring, storing, adapting, retrieving, consulting, using, disseminating, combining, deleting, etc. the personal data. The purpose might include such items as provision of support and maintenance services, statutory obligations, employment processing, consultancy services, etc.
Type of personal data processed	[●] Describe the types of personal data being used by Capita in providing services to Customer in as much detail as possible (eg. contact details (including full names, addresses, telephone numbers and email addresses), card payment data (including 16-digit card number, expiry date and CVC), identity verification data (including national insurance or social security numbers, passports, driving licences and national identity cards)). If Capita will process any special category data it should be listed separately. Special category data is defined as any personal data revealing racial or ethnic origins, political opinions, religious or philosophical beliefs, trade union membership, genetic and biometric data used for identification, data concerning health and data concerning a person's sex life or sexual orientation (eg. special category data including self-reported race and ethnicity data for diversity and inclusion purposes, health data including details of absences, long-term leave and allergens, etc).
Categories of data subjects	[●] Describe the types of people whose personal data is used by Capita in providing Services to

	<i>Customer. Examples might include staff, customers, users of a particular website, users of a particular piece of software, etc.</i>
Duration of the processing	<i>[•] This should set out how long Capita intends to process personal data for – including dates where possible or state "For the Term of this Agreement".</i>