

Scanning and Digitisation

Terms and Conditions

G-Cloud 15





DATED

202[]

CAPITA BUSINESS SERVICES LTD

And

[]





This Agreement is made on the [] day of [] 202[]

PARTIES

- (1) **CAPITA BUSINESS SERVICES LTD** incorporated and registered in England and Wales with company number 02299747 whose registered office is at First Floor, 2 Kingdom Street, Paddington, London, W2 6BD ("**Capita**")
- (2) [] incorporated and registered in [] with company number [] whose registered office is at [] ("**Client**")

BACKGROUND

- (A) The Client has requested Capita to provide the services as detailed in Schedule 2 (Services).
- (B) Capita has agreed to provide the Services in consideration of payment of the Charges and subject to the terms and conditions set out in this Agreement.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions

Agreement: the following terms and conditions and any Schedule attached hereto.

Applicable Laws: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the Documents and/or the provision of the Services.

Background IPR: any and all IPR owned by or licensed to either Party and developed or obtained before or independently of the Agreement.

Business Hours: the period from 08:00 to 16:00 on any Working Day.

Capita Personnel: the individuals engaged by the Supplier to provide the Services.





Change Control Procedure: the procedure to implement any proposed Variations to the Agreement set out in Schedule 4 (Change Control Procedure).

Charges or Fees: the charges and any other fees, sums or remuneration for the Services as set out in Clause 10 (Fees, Invoicing and Payment) and Schedule 3 (Charges).

Claim: any claim, demand, proceeding, regulatory action, complaint or other action and including threats of any of the same.

Client Data: the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media (including without limitation, embodied in the Storage Materials) and which are: (i) supplied to Capita by or on behalf of the Client; and/or (ii) which Capita is required to generate, process, store or transmit pursuant to this Agreement.

Commencement Date: [[Date] the date of this Agreement].

Confidential Information: any information, which by its nature is confidential, concerning the business, assets, affairs, customer or suppliers of the other Party or any member of its Group, but which for the avoidance of doubt shall not include the Documents.

Consents: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services on the terms of this Agreement.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation (EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (SI 2003/2326) as amended. The terms **Controller, Processor, Data Subject, Personal Data Breach, Processing,** and **appropriate technical and organisational measures** shall each have the meaning given to them in the Data Protection Legislation.

Deliverables: all documents, electronic communication, compact discs, processed data, and other materials to be provided by Capita to the Client or at the direction of the Client to a third party as part of the Services.





Documents: those documents described in Schedule 2 (Services) either delivered to or already held by Capita as at the Commencement Date for storage in the Facility. The term **Documentation** shall be interpreted accordingly.

Facility: Capita's storage and scanning facilities at Darlington and/or Capita's storage only facility at Doncaster.

Force Majeure: any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control.

Force Majeure Event: any circumstance or cause beyond a party's reasonable control including but not limited to 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 disputes, strikes, industrial action or lockouts and any change in Applicable Laws or due to action taken by a government or public authority (including quarantine measures).

Foreground IPR: any IPR that arises, is created or developed by Capita for the 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.

Good Industry Practice: using the standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

Group: a company's subsidiary or parent undertakings and any subsidiary undertaking of a parent undertaking of that company (as defined in section 1162 of the Companies Act 2006).

Intellectual Property Rights or IPR: patents, utility modes, 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: any losses, demands, claims, actions, proceedings, damages, payments, costs (including legal and other professional costs), expenses or other liabilities.

Services: the services to be provided to Capita as defined in Schedule 2 (Services), including services which are incidental or ancillary to such services.

Storage Materials: all files, documents, paper, film, fiche, reports, photographs, computer data files (volatiles or non-volatile) media supplied by or on behalf of the Client to Capita for scanning, processing, storage, reference or other such action as required by the Client in the course of the Services provided by Capita.

Variation: means any change to this Agreement.

VAT: value added tax and/or 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: any day other than Saturday, Sunday or public holiday in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A personal includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4 The schedules form part of this Agreement and shall have effect as if it set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural, and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to legislation or legislative provision is a reference to it as amended, extended or re-enacted from time to time.





- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses and schedules are to the Clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms including, include, in particular, for example or any similar expressions shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Commencement and Duration

This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with Clause 11 (Termination), and shall continue for a period of [] years (“**Initial Period**”). At the expiry of the Initial Period, this Agreement shall automatically renew for successive periods of twelve (12) months, unless or until terminated by either party, either in accordance with Clause 11 (Termination), or:

- (a) at the end of the Initial Period, provided written notice is given to the other party at least six (6) months prior to the end of the Initial Period; or
- (b) at the end of any successive twelve (12) month period, provided written notice is given to the other party at least six (6) months prior to the end of such successive twelve (12) month period.

3. Appointment of Capita

The Client appoints Capita to provide the Services to the Client on the terms and conditions of this Agreement.

4. Services

In consideration of payment of the Charges, Capita agrees to provide the Client the Services specified in Schedule 2 (Services) for the Term in accordance with the provisions of this Agreement.

5. Capita’s General Obligations

5.1 In providing the Services, Capita shall:

- (a) provide the Services in accordance with Schedule 2 (Services);



- (b) provide the Services in accordance with Applicable Laws and Good Industry Practice. Any changes to the Services required as a result of changes to the Applicable Laws shall be agreed in accordance with Clause 24 (Variation);
- (c) subject to Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.4 (Consequences of Expiry or Termination), do nothing to prejudice the Client's title or rights in or controllership of the Documents;
- (d) obtain, maintain and comply with all Consents;
- (e) allocate sufficient resources to enable it to provide the Services in accordance with the terms of this Agreement, and ensure that all Capita Personnel engaged in the provision of the Services are competent and appropriately trained and supervised; and
- (f) notify the Client in writing promptly upon the occurrence of a change of control of Capita.

5.2 Capita shall not be responsible for checking the accuracy of Client Data unless otherwise agreed.

6. Client's Obligations

6.1 The Client shall:

- (a) comply with Applicable Laws;
- (b) not unreasonably withhold or delay providing instructions to Capita on request;
- (c) use best endeavours to ensure that the Documents shall contain no illegal, obscene, pornographic, defamatory or blasphemous Client Data or other such material. The Client will notify Capita immediately it becomes aware of the existence of any material contained in the Documents which might cause the Client to be in breach of this Clause 6.1(c) (Client's obligations);
- (d) obtain, maintain and comply with all Consents. Any additional expenses or charges incurred by Capita resulting from failure to comply shall be chargeable;





- (e) provide Capita with all descriptions and information relating to the Documents necessary for Capita to provide the Services;
- (f) not do or omit to do anything that prevents Capita from providing the Services or hinders Capita in the provision off the Services; and
- (g) notify Capita in writing promptly upon the occurrence of a change of control of the Client and/or change in controllership of any Personal Data comprised within the Documents.

6.2 To the extent that any failure or delay to perform the Services in accordance with this Agreement by Capita results from the Client's failure to comply with its obligations under this Clause 6 (Client's obligations) or as otherwise stated elsewhere in this Agreement, Capita shall have no liability for any such failure or delay and shall be entitled to claim compensation subject to and in accordance with the principles set out in Clause 6.3 (Client's obligations) below.

6.3 Capita is entitled in accordance with Clause 6.2 (Client's obligations) to compensation for failure or delay to perform the Services in accordance with this Agreement, then such compensation shall be determined in accordance with the following principles:

- (a) the compensation shall reimburse Capita for additional costs incurred by Capita that Capita can demonstrate it has incurred solely and directly as a result of the Client's failure to comply with its obligations; and
- (b) the compensation shall not operate so as to put Capita in a better position than it would have been in but for the occurrence of the Client's failure to comply with its obligations.

7. Due Diligence

The Client shall provide Capita with all information required to enable Capita to carry out the Services. Where Capita discovers any information during due diligence which changes or adds to the information it had been provided with up to the date of the order in any material way, Capita shall be entitled to increase the Charges to the extent reasonably necessary to reflect that changed or additional information.



8. Delivery

- 8.1 Unless otherwise agreed in writing between the Parties, any dates set out in the Agreement, or which are quoted for delivery of the Deliverables and/or provision of Services are approximate only and time shall not be of the essence in relation to such timescales. The Services and/or Deliverables may be provided and/or delivered by Capita in advance of the quoted date on giving reasonable notice to the Client.
- 8.2 Where the Services and/or Deliverables are to be provided in instalments as set out elsewhere in Schedule 2 (Services), failure by Capita to deliver any one or more of the instalments in accordance with these conditions, or any claim by the Client in respect of any one or more instalments, shall not entitle the Client to reject the other instalments or to treat the Agreement as a whole as repudiated.

9. Ownership

- 9.1 Title to all materials and systems used by Capita in providing the Services shall remain in Capita's ownership and shall not pass to the Client in any circumstances.

10. Charges, Invoicing and Payment

- 10.1 In consideration of providing the Services, the Client will pay Capita the Charges set out in Schedule 3 (Charges).
- 10.2 Charges are stated exclusive of VAT which shall be paid by the Client at the rate and from time to time in the manner prescribed by law.
- 10.3 Capita may increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with percentage increase in the consumer price index (CPI) in the preceding twelve (12) month period, and the first such increase shall take effect on the first anniversary of the Commencement Date of this Agreement and shall be the latest available figure for the percentage increase in the consumer prices index.





- 10.4 Should the Services be suspended at the request of or delayed through any default by the Client, Capita shall be entitled to payment in full for Services already carried out, materials specially ordered and other additional costs (such as downtime on the equipment and monies paid by Capita to Capita employees for hours worked by such employees in excess of their normal working hours (often referred to as any “Overtime”) where Overtime has been arranged and disposal costs) including storage incurred as a result of such suspension or delays.
- 10.5 Capita shall invoice the Client monthly in arrears.
- 10.6 Invoices are payment by the Client within thirty (30) days of the date of the invoice. Save where there is a dispute in good faith in accordance with Clause 10.7 (Charges, Invoicing and Payment), Capita shall be entitled to charge interest on unpaid invoices from the due date of payment to the actual date of payment at a rate of 8% per annum above Barclays Bank Plc base lending rate from time to time, without prejudice to any other rights Capita has.
- 10.7 Where the Client disagrees in good faith with any amount invoiced, it shall notify Capita of the reason for such disagreement within thirty (30) days of the date of invoice. Any dispute in relation to an invoice shall be promptly discussed in good faith by the parties (including escalation to senior stakeholders where required), and the Client shall in the meantime pay any undisputed sums under the invoice in accordance with Clause 10.6 (Charges, Invoicing and Payment).
- 10.8 Any payments made by or due from the Client under this Agreement shall be free and clear of all taxation whatsoever save only for any deductions or withholdings required by law. If any deductions or withholdings are required by law, the Client shall be liable under this sub-clause to pay to Capita such further sums as will ensure that the aggregate of the sums paid or payable under this sub-clause shall, after deducting therefrom all deductions or withholdings from such sums, leave Capita with the same amount as it would have been entitled to receive in the absence of any such deductions or withholdings.
- 10.9 All payments by the Client to Capita under the Agreement shall be made without any deductions or set-off.



11. Termination

11.1 Either Party may terminate this Agreement, immediately or on expiry of the notice period specified in the termination notice:

- (a) if the other Party commits an irremediable breach of this Agreement;
- (b) if the other Party commits a material breach of this Agreement which it fails to remedy within thirty (30) days of notice from the non-breaching party. For the avoidance of doubt this shall include where the Client fails to pay any undisputed Charges in accordance with Clause 10.6 (Charges, Invoicing and Payment):
- (c) in the circumstances described in Clause 18.2 (Force Majeure);
- (d) where the other party begins any negotiations to reschedule its debts or enters into any arrangements with its creditors;
- (e) 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;
- (f) 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);
- (g) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (h) a receiver, administrative receiver or administrator is appointed.

12. Consequences of Expiry or Termination

12.1 On expiry or termination of the Agreement:

- (a) the Client shall pay to Capita all outstanding invoices, in respect of the Services provided within thirty (30) days from the date of an invoice for the same; and



- (b) each Party shall cease using the other Party's Confidential Information, and at the disclosing Party's election, promptly return or delete it save where the receiving Party is required to retain copies to comply with Applicable Laws.

12.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

13. Risk and Liability

13.1 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 an obligation to pay the Fees in accordance with this Agreement), loss of sales, anticipated savings or good will, loss of business opportunity or contracts in each case whether direct or indirect, or the incremental costs of procuring alternative services,

even if such losses could have been foreseen.

13.2 Nothing in this Clause 13 (Risk and Liability) limits or excludes:

- (a) the Client's liability for payment of Charges properly due and owing to Capita; and
- (b) any liability which cannot legally be limited or excluded, including liability for:
 - (i) death or personal injury caused by negligence;
 - (ii) fraud or fraudulent misrepresentation; and
 - (iii) breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).





- 13.3 Subject to Clauses 13.1 and 13.2 (Risk and Liability), Capita's total liability to the Client for all other loss or damage shall not exceed a sum equivalent to 100% of the Charges (excluding postage, ink, paper, stationery and any other carriage charges) paid or payable in any calendar year of the Agreement.
- 13.4 Capita shall in no circumstances be liable for loss or damage caused by any default, act or omission on the part of the Client and the Client agrees to indemnify and keep Capita harmless in respect of any claims by third parties including but not limited to the FCA (the Financial Conduct Authority) which are caused by or arise from any reasonable act by Capita carried out pursuant to instructions issued by the Client.
- 13.5 Subject to Clauses 13.1, 13.2 and 13.4 (Risk and Liability), the Client's total liability to Capita shall not exceed a sum equivalent to 100% of the Charges paid or payable in any calendar year of the Agreement.

14. Insurance

- 14.1 Client shall be responsible for all insurance obligations (including without limitation the obligation to insure Client Data and Documents whilst on Capita sites).

15. Data Protection

- 15.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 15 (Data Protection) 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 acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Capita is the Processor. Schedule 5 (Processing of Personal Data) sets out the scope, nature and purpose of processing by Capita, the duration of the processing and the types of Personal Data and categories of Data subject.
- 15.3 Without prejudice to the generality of Clause 15.2 (Data Protection), the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer to and retention of Personal Data by Capita for the duration and purposes of this Agreement.
- 15.4 Capita shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Agreement:





- (a) process that Personal Data only on the documented written instructions of the Client as set out in Schedule 5 (Processing of Personal Data) unless Capita is required by Applicable Laws to otherwise process that Personal Data;
- (b) ensure that its 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 result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that all Capita Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) subject to Clause 15.4(e) (Data Protection), be entitled to engage the sub-processors listed at Schedule 5 (Processing of Personal Data) to perform aspects of the Services that facilitate or are otherwise ancillary to Capita's provision of the Services, including where this entails Processing. Capita shall provide reasonable prior written notice of the addition to, or replacement of those sub-Processors listed at Schedule 5 (Processing of Personal Data). If, acting reasonably, the Client objects to any such sub-Processing, then it shall provide written details to Capita within fourteen (14) days of the date of Capita's written notification, and the following shall apply:
 - (i) Capita shall refrain from providing Personal Data to the relevant sub-processor save to the extent agreed with the Client as necessary to facilitate time-critical services;
 - (ii) the Parties shall discuss the Client's concerns and where these cannot be resolved, acting reasonably, then Capita shall use reasonable endeavours to propose an alternative arrangement;
 - (iii) if the Parties agree an alternative arrangement, then any changes to the Services or charges (including to implement such arrangement) will be agreed by the Parties in writing; and
 - (iv) if the Parties are unable to agree an alternative arrangement, then they shall refer to the matter to Dispute Resolution;



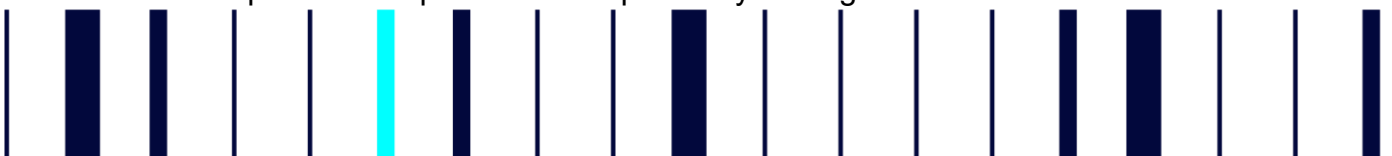


- (e) not transfer outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or Capita has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Capita complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) Capita complies with reasonable instructions notified to it in advance by the Client with respect to the processing of Personal Data;
- (f) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Client without undue delay on becoming aware of a Personal Data Breach;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 15 (Data Protection) and allow for audits by the Client's designated independent auditor on reasonable prior notice (not less than 10 Working Days), undertaken during normal business hours and using all reasonable endeavours not to interrupt Capita service delivery. The Client shall be entitled to conduct up to one audit per calendar year, during the term of the Agreement, with any additional audit(s) being subject to agreement of Capita's reasonable charges unless such additional audit(s) are in response to a Personal Data Breach.



16. Confidentiality

- 16.1 It is understood that during the course of this Agreement, a Party (the **“Receiving Party”**) may receive or be exposed to Confidential Information of the other Party (the **“Disclosing Party”**) or its licensors. The Receiving Party shall exercise no lesser security measures and degree of care than those it applies to its own Confidential Information and in any event will exercise a reasonable and appropriate degree of care and protection of such Confidential Information.
- 16.2 Each Party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 16.2 (Confidentiality).
- 16.3 Each Party may disclose the other Party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this Clause; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.4 Neither Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 16.5 Each Party shall:
- (a) immediately notify the Disclosing Party if the Recipient suspects or becomes aware of any unauthorised access, copying, use or disclosure of the Confidential Information in any form or if the Recipient is required by law to disclose any of the Disclosing Party's Confidential Information;
 - (b) take all reasonable steps to enforce any obligation of confidence imposed, or required to be imposed, by this Agreement; and
 - (c) do all things, execute all documents and give all assistance reasonably required by the Disclosing Party to enforce any obligation of confidence imposed or required to be imposed by this Agreement.



16.6 Each Party acknowledges that this Agreement is not intended to transfer, and neither Party shall gain any right or interest in, the intellectual property of the other Party.

16.7 Without prejudice to any other rights or remedies of the Disclosing Party, the Parties agree that monetary damages would not be a sufficient remedy for breach of the terms of this Clause 16 (Confidentiality) and that the Disclosing Party shall be entitled, to seek injunctive relief or specific performance as a remedy for such breach.

17. Intellectual Property Rights

17.1 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 that the Client (or its licensor) owns the IPR in the Client Data; and
- (b) 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.

17.2 The Parties acknowledge and agree that:

- (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 the 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 the Client to benefit from the Services. The 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 and only where such member is intended to directly benefit from the Services);
- (c) where the Client acquires any title, by operation of law, under the Agreement, the Client unconditionally and irrevocably assigns to Capita all IPR that vest in:



- (i) the Foreground IPR; and
- (ii) 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. The Client shall undertake all activities required by Capita to formalise and perfect such assignment; and

- (d) the 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.

17.3 Without prejudice to Clause 17.1(b) (Intellectual Property Rights) the Client hereby grants to Capita a non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) any Client Data which is provided by the Client to Capita during the term of this Agreement, but only to the extent that such use, reproduction, modification, adaptation and enhancement is necessary for the performance of the Services and not otherwise. Such licence shall terminate automatically without notice from the Client upon the termination of this Agreement.

17.4 Subject to clause 17.6 (Intellectual Property Rights), each Party shall indemnify (“**Indemnifier**”) and hold the other Party (and applicable Group members) (“**Indemnified Party**”) 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 Indemnified Party’s use of the Indemnifier’s IPR in connection with the Services, in each case in accordance with the Agreement.

17.5 The IPR indemnity obligation on:

- (a) Capita under Clause 17.4 (Intellectual Property Rights) shall not apply to any Losses which result from the Client's (or its Group member's or contractor's):
- (i) combination of all or part of the Services with other products or technology not supplied by, or instructed to do so by Capita;



- (ii) failure to use the Services (or aspects thereof) in accordance with the relevant specification, requirements and/or operating parameters;
 - (iii) modification of all or part of the Services other than by Capita or its subcontractors;
 - (iv) instructions, requirements or specifications if and to the extent that Capita's compliance with the Client's requirements or specifications resulted in the infringement;
 - (v) breach of any licence terms and conditions in relation to the use and/or enjoyment of the Services as notified to the Client by Capita; or
- (b) the Client under Clause 17.4 (Intellectual Property Rights) shall not apply to any Losses to the extent that such Losses arise as a result of breach by Capita other than in accordance with the Client's instructions, requirements or specifications of any licence terms and conditions in relation to the use and/or enjoyment of the Client IPR as notified to Capita by the Client.

17.6 In respect of any claim arising under any indemnity contained in this Agreement, the Indemnified Party shall:

- (a) as soon as possible give to the Party who has given the Indemnifier written notice of the Claim, circumstance and matter against which the Indemnified Party is claiming to be indemnified and all details of the Claim from time to time in the knowledge or possession of the Indemnified Party; and
- (b) not without the prior written consent of the Indemnifier (which shall not be unreasonably withheld or delayed) admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the Claim;
- (c) at the request of the Indemnifier, allow the Indemnifier sole conduct of the Claim and of any negotiations relating to the Claim on the basis that the Indemnifier shall be responsible for and entitled to all costs and awards arising from the Claim or negotiations (provided that the Indemnified Party shall be kept informed as to the conduct of such defence, settlement and/or counterclaim); and



- (d) provide to the Indemnifier at the Indemnifier's cost such assistance as the Indemnifier reasonably requires in relation to the Claim.

18. Force Majeure

18.1 No Party shall be liable to the other Party for any delay or failure to perform its obligations 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.

18.2 Where the affected Party is prevented or delayed in complying with its' material obligations by a Force Majeure Event for at least six (6) months in any calendar year, then the non-affected Party may terminate this Agreement immediately or on the expiry of the period specified in the termination notice.

19. TUPE

19.1 The Parties acknowledge that it is intended by the Parties that the Transfer of Undertakings (Protection of Employment Regulations) 2006 as amended from time to time ("TUPE") will not apply in relation to the commencement of this Agreement. The Client hereby warrants, undertakes and represents to Capita that the information provided to Capita regarding the non-applicability of TUPE is complete and accurate and the Client hereby agrees to indemnify Capita against any loss, liability, costs, damage, expense or fee suffered or incurred by reason of any breach of this warrant, undertaking and representation by the Client.

19.2 The Client undertakes to Capita that it will indemnify and fully reimburse on demand Capita against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) which Capita may suffer, sustain, incur, pay or be put to by reason or on account of or arising from any action, claim or other legal recourse of any kind by any present or former employee of the Client or any trade union or staff association recognised by the Client in relation to such present or former employees arising from any act or omission or continuing act or omission of the Client (including without limitation the termination of any such employee's employment) on, prior to or following the Commencement Date.



- 19.3 If any contract of employment or any collective agreement has effect after the Commencement Date as if originally made between Capita and any present or former employee of the Client or as if originally made between Capita and any trade union by virtue of TUPE, Capita shall within ninety (90) days of becoming aware of any such contract of employment or collective agreement be entitled to terminate such contract or agreement forthwith and the Client shall indemnify and reimburse Capita in respect of all losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) arising out of or in relation to such contract or collective agreement (whether arising before, on or after the Commencement Date) or the termination thereof.
- 19.4 The Client shall indemnify Capita and keep it indemnified against any claim against Capita arising from any failure on the part of the Client to comply with any of its obligations pursuant to Regulation 13 of TUPE including all costs, awards and expenses in connection therewith.
- 19.5 Capita shall within thirty (30) days of receiving a written request from the Client to that effect, provide the Client with the terms and conditions of employment of each and every employee involved wholly or substantially in the provision of the Services including in respect of which employee name, job title, age, length of service, details of remuneration payable, details of hours of work and all terms and conditions of employment.
- 19.6 If any contract of employment or any collective agreement has effect after this Agreement expires or is terminated for any reason whatsoever as if originally made between the Client or any new provider of the Services ("**the New Service Provider**") and any employee or former employee of Capita or as if originally made between the New Service Provider and any trade union by virtue of TUPE the New Service Provider shall within sixty (60) days of becoming aware of any such contract of employment be entitled to terminate such contract or agreement forthwith and Capita shall indemnify and reimburse the New Service Provider in respect of all losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) arising out of or in relation to such contract or collective agreement or the termination thereof (whether arising before, on or after the termination of this Agreement). For the avoidance of doubt in this clause any reference to the New Service Provider shall include the Client.



20. Non-solicitation

20.1 Neither Party shall (except with the prior written consent of the other) during the term of the Agreement and for a period of six (6) months thereafter, employ, entice away or solicit the services of (or attempt to do so) of any employee or consultant of the other party who has been engaged in the provision of the Services. Such restrictions shall not apply:

- (a) to any employee who has left by reason of redundancy or agreed severance; or
- (b) the employee or consultant responds to a bona fide advertisement of a role which is open to all-comers.

21. Conflict of Interest

Each Party shall notify the other as soon as reasonably practicable if it becomes aware of any actual or potential conflict of interest in relation to the provision of the Services, and both Parties shall use reasonable endeavours to discuss arrangements that could be put in place to preserve confidentiality and to ensure that any advice provided by Capita in connection with the Services is wholly objective.

22. Dispute Resolution

22.1 If a dispute arises in relation to any aspect of this Agreement, the representatives of the Client and Capita responsible for the administration of this Agreement shall first consult and discuss in good faith in an attempt to come to an agreement in relation to the disputed matter. If the Parties fail to resolve the dispute at that level within a reasonable period of time (having due regard for the nature of the dispute and the operational necessity for its resolution), the dispute shall be escalated to the respective responsible company directors within each Party for resolution.

22.2 If the dispute remains unresolved between the Parties after fourteen (14) days after it has been referred to the directors of the Parties pursuant to Clause 22.1 (Dispute Resolution) above, then:

- (a) if the Parties so agree, the Parties may proceed to mediation provided by the Centre for Dispute Resolution (or such other body as the Parties may agree); or



- (b) the Parties may employ any other method or procedure for the resolution of disputes as may be agreed between them; and
- (c) if no such agreement is reached between the Parties pursuant to Clauses 22.2(a) to 22.2(b) (Dispute Resolution) above within a period of seven (7) days, both Parties shall be entitled to pursue the matter in law.

23. Notices

Any notice to be given under this Agreement must be in writing and may be given by email or first-class post. Notices shall be sent to the email address of the regular representative, or the registered office of a party save where otherwise agreed. Any notice to be given shall be deemed effective when transmitted during Business Hours (or when Business Hours next commence) if sent by email, or two (2) Working Days after posting.

24. Variation

A variation of this Agreement shall only be binding upon the Parties if it has followed the Change Control Procedure as set out in Schedule 4 (Change Control Procedure).

25. Transfer, Assignment and Sub-Letting

- 25.1 The Client shall not assign or otherwise transfer this Agreement or all or any of its rights and/or obligations under this Agreement without the prior written consent of its obligations under this Agreement.
- 25.2 Each Party undertakes that it will provide such information, instruction and documentation as is necessary and/or reasonably required to enable each Party to comply with its respective obligations under this Agreement.

26. General

- 26.1 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.
- 26.2 Nothing in this Agreement is intended to create a partnership, joint venture or any other legal relationship that would impose liability on one party for the act or failure to act of the other party.



- 26.3 This 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.
- 26.4 Nothing in this Agreement is intended to confer any right or benefit on any third party or any right to enforce a provision contained in this Agreement and the Contracts (Rights of Third Parties) Act 1999 is hereby expressly excluded.
- 26.5 If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or voidable such a provision shall be severed from the body of this Agreement and the remainder hereof shall stand in full force and effect.
- 26.6 Any land or premises (including temporary buildings) made available to Capita by the Client in connection with this Agreement shall be made available to Capita free of charge and shall be used by Capita solely for the purpose of performing this Agreement. Capita shall have the use of the land or premises as licensee and shall vacate the same upon the termination or expiry of this Agreement.
- 26.7 Capita shall be entitled to audit at its own expense the Client's use of the Services save that any such audit is carried out by appointment and with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the business of the Client.
- 26.8 Save as required by law, no publicity or advertising shall be released by either Party in connection with the subject matter of this Agreement without the prior written approval of the other which shall not be unreasonably withheld.
- 26.9 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.
- 26.10 This Agreement and any contractual and non-contractual disputes arising out of it shall be governed and construed by the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim, except that each Party shall be entitled to seek injunctive relief or other relief in any jurisdiction where a breach of the Agreement is threatened to occur or has occurred.





This Agreement has been entered into on the date stated at the beginning of it.

Signatures

Signed for and on behalf of Capita:

Signed for and on behalf of the Client:

Signed:

Signed:

Name:

Name:

Position:

Position:

Date:

Date:



Schedule 1 – Specific Service Terms and Conditions

Part A – Outbound and/or Inbound Services

1. Illegal Matter

- 1.1 Capita shall not be required to print or reproduce any matter which in Capita's reasonable opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.
- 1.2 Without prejudice to and in addition to Capita's right to be indemnified at Clause 17.4 (Intellectual Property Rights) Capita shall be fully indemnified by the Client in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any Client Data printed or reproduced for the Client. The indemnity shall include (without limitation) any amounts paid in settlement of any claim.

2. Charges, Invoicing and Payment

- 2.1 Capita shall be entitled to increase the Charges at any time to reflect increases in postage, ink, stationary and paper prices or other carriage costs in line with any increase in costs enforced by its suppliers. A period of fourteen (14) days' notice will be provided in writing detailing any such increase.
- 2.2 Should expedited delivery be agreed, without prejudice to Clause 8 (Delivery) Capita shall be entitled to increase the Charges to account for monies paid by Capita-to-Capita employees by way of Overtime and/or any other additional costs incurred by Capita, in each case, incurred in order to expedite delivery.
- 2.3 Capita reserves the right to make additional charges in the event that the Client requires any special packaging not identified in Schedule 2 (Services).

Part B – Records Management and Storage Services

1. Facility

- 1.1 Capita shall provide the Facility.





- 1.2 Capita shall not store the Documents anywhere other than the Facility without the prior written consent of the Client.
- 1.3 Capita shall:
- (a) store the Documents in its possession so that they remain readily identifiable as the Client's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Documents; and
 - (c) keep and maintain the Documents in good condition and, subject to Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.4 (Consequences of Expiry or Termination), shall not dispose of or use the Documents other than in accordance with the Client's instructions or authorisation.
- 1.4 Subject to Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 1.3 (Facility) and provided that it is in compliance with Capita's obligations in Clause 15.4(b) (Data Protection):
- (a) Capita may use such method for the storage and handling of the Documents as it is in its absolute discretion considers appropriate; and
 - (b) Capita shall have discretion as to where in the Facility it shall store the Documents and it may, without notice to the Client but at Capita's expense, move the Documents from one part of the Facility to another part of the Facility or to move to a different Facility.
- 1.5 Capita shall promptly, on request, provide such information as the Client reasonably requires regarding the security systems in place at the Facility.

2. Capita's Warranty

Capita warrants on an ongoing basis that it has the right to use the Facility for the purpose of storing and, where applicable, scanning and destroying the Documents.

3. Client's Warranty

The Client warrants on an ongoing basis that it is either the owner and/or Controller of the Documents, and there are no restrictions on its right to enter this Agreement with Capita.





4. Client Obligations

4.1 The Client shall:

- (a) for new deposits, affix barcode box labels (supplied by Capita) to each box;
- (b) create a consignment/inventory log of boxes scheduled for collection, detailing as a minimum, the box barcode reference, high level summary of description of contents and retention review date. Additional Client-specific information can be added if required;
- (c) email an electronic copy of the consignment/inventory log in advance of collection;
- (d) ensure all items in storage have a valid retention date in line with the Client data retention policy;
- (e) approve destruction notifications in a timely manner. Destruction notices will be supplied monthly; the Client acknowledges storage charges will continue until destruction of approved materials is completed; and
- (f) not allow retention dates on storage items to lapse; where storage items have not been approved for destruction, a new retention date must be supplied.

5. Charges, Invoicing and Payment

- 5.1 Capita reserves the right to make additional and reasonable charges to cover the cost of the storage of any Documents and/or Deliverables which because of any reason outside of the control of Capita cannot be delivered or is not collected by the Client or is returned to Capita by the Client, and as a result remains on Capita's premises for a period in excess of ten (10) days. In the absence of agreement to pay reasonable storage charges Capita reserves the right to destroy such Documentation and/or Deliverables upon ten (10) days written notice to the Client.



- 5.2 If the Client transfers ownership of any of the Documents (including controllership of Personal Data within the Documents) while such Documents are in the Facility, the Client shall continue to be responsible for payment of the Charges until the Documents are removed from the Facility or destroyed in accordance with Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7 (Consequences of Expiry or Termination).

6. Ownership, Risk and Liability

- 6.1 The Client shall retain ownership of all Documents during any period it is under the custody and control of Capita.
- 6.2 Capita shall protect the Documents against any loss, destruction or damage whilst they are located at the Facility in accordance with Good Industry Practice.
- 6.3 All insurance obligations (including without limitation the obligation to insure Client Data) shall be the responsibility of the Client.
- 6.4 The Client shall inform Capita of anything that is likely to affect the insurance in place for the storage and transit of the Documents and shall not be held liable for any failure caused as a result of the Client's failure to provide such information.
- 6.5 Capita shall have no liability for the fair wear and tear of Documents occasioned during the handling, storage or otherwise dealing with such Documents in the provision of the Services.
- 6.6 Risk in the Documents shall be with Capita whilst the Documents are at the Facility. The Documents shall remain at Capita's risk until:
- (a) their delivery into the possession of any of the Client or their employees, agents or representatives (including for the avoidance of doubt a third-party courier) in accordance with Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2(a) (Consequences of Expiry or Termination);
 - (b) where Capita arranges a courier in accordance with Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2(b) (Consequences of Expiry or Termination);



- (c) destruction in accordance with Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2(c) (Consequences of Expiry or Termination),

in each case as evidenced by written receipt or certificate of destruction.

- 6.7 For the avoidance of doubt, in the absence of its own negligent or wilful act, Capita shall not be liable to the extent that losses, destruction of or damage to the Documents arises from following the instructions of the Client.

7. Consequences of Expiry or Termination

- 7.1 By no later than [TBC based on volume of boxes] prior to the scheduled expiry of the Agreement or the expiry of a termination notice served in accordance with Clause 11 (Termination), or otherwise as soon as possible where the Agreement is terminated immediately for cause in accordance with Clause 11.2 (Termination), the Client shall instruct Capita on its intended option under Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2 (Consequences of Expiry or Termination).

- 7.2 In relation to the Documents, the Client may instruct Capita to:

- (a) ready the Documents for physical collection by or on behalf of the Client on a mutually agreeable time and date. The Client shall bear the costs of its attendance or an agent (e.g. courier) on its behalf; or
- (b) arrange physical transportation to a location directed by the Client using a secure courier of Capita's choice, subject to the agreement of relevant disbursement costs which shall be borne by the Client. Capita shall act reasonably in providing advance quotes to the Client for this purpose; or
- (c) securely destroy the Documents based on the rates in Schedule 3 (Charges), and to certify destruction once completed.

- 7.3 Where the Client instructs the collection option at Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2(a) (Consequences of Expiry or Termination), Capita grants a licence to the Client and their employees, agents and representatives (as applicable) to access the Facility during Business Hours for the purpose of retrieving the Documents. The Client shall ensure that when visiting the Facility its employees, agents and representatives shall:





- (a) co-operate as reasonably necessary with Capita Personnel;
- (b) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of Capita; and
- (c) comply with all rules and instructions issued from time to time by Capita relating to the use and security of the Facility.

7.4 Where the Client fails within six months of the expiry or termination of the Agreement to either:

- (a) provide or agree any instruction under Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2 (Consequences of Expiry or Termination); or
- (b) collect or arrange collection of the Documents where it has elected the option Schedule 1 (Specific Service Terms and Conditions), Part B (Records Management and Storage Services), paragraph 7.2(a) (Consequences of Expiry or Termination),

then provided Capita has sent at least two (2) reminders to the Client during such period in accordance with Clause 23 (Notices), Capita shall be entitled to securely destroy the Documents at the Client's costs and shall certify destruction once completed. The Client shall indemnify and hold Capita harmless in relation to any costs, losses, damages or other liabilities incurred by Capita in relation to any Claim by the Client or any third party relating to the destruction of the Documents.







Procedure

1. Either Party can request a Variation to the Agreement which is only effective if agreed in writing and signed by both Parties.
2. Capita will complete the Change Control Note (CCN) and provide a copy to the Client for their review and agreement.
3. If the Variation to the Agreement cannot be agreed or resolved by the Parties, then the Parties can either:
 - 3.1 agree that the Agreement continues without the Variation; or
 - 3.2 refer the Dispute to be resolved via the Dispute Resolution Procedure detailed within Clause 22 (Dispute Resolution).





Change Control Note Template

CHANGE CONTROL NOTE (CCN)

Between Client and Capita

1. The Services are to be varied as follows:

Agreement Ref:	Change Control No:	Originator:
Agreement Name:		
Proposed Variation:		
Reason for the Variation:		



Contract Variation:

Change 1

Section:

Replace the Original Text with the Replacement Text

Original Text

Replacement Text

Change 2

Section:

Replace the Original Text with the Replacement Text

Original Text

Replacement Text





Financial Variation:

Charges

Attached documents:

2. Words and expressions in this CCN shall have the meanings given to them in the Agreement.
3. The Agreement, including any previous CCN, shall remain effective and unaltered except as amended by this CCN,

Signed for and on behalf of Client:

Signed for and on behalf of Capita:

By

By

Name

Name.....

Title

Title.....



1. Overview

- 1.1 This Schedule sets out the data processing that Capita is authorised to carry out in accordance with this Agreement.
- 1.2 The Client shall advise Capita of any further written instructions with respect to the processing by Capita.

2. Contact Details

Data Controller	[Insert Client Name]
Key Contact Name	[Insert Client Contact]
Key Contact Title	[Insert Client Job Title]
Key Contact Email	[Insert Client Email]
Account Owner (Capita)	[Insert Capita Name]
Account Owner (Capita) Email	[Insert Capita Email]

3. Lawful Basis for the Processing

- 3.1 Capita is acting as a Data Processor under the Agreement. The legal basis for Processing Data Subject Personal Data is to be defined by the Client and is to be confirmed in this Schedule by the Client who is acting as the Data Controller.

4. Description of Processing

Client's legal basis for Processing	[Client to please complete]
Subject matter of the Processing	Personal Data to be processed for the purposes of Capita carrying out the Services
Duration of the Processing	the term of this Agreement and until collected, returned or destroyed in accordance with Clause [] (Consequences of Expiry or Termination)
Nature and purpose of the Processing	Provision of the Services as described in this Agreement. [insert any other relevant detail]
Type of Personal Data	[insert details]

Categories of Data subjects	[insert details]
Controller's rights and obligations	As set out in Clause [] (Data Protection) of this Agreement (as may be varied or amended from time to time by the parties in writing) and in addition its obligations are prescribed under the Data Protection Legislation

5. Sources of Personal Data

5.1 Capita shall receive Personal Data:

- (a) via SFTP;
- (b) as supplied by the Client.

6. Location of Personal Data

Personal Data is held electronically in Capita secure data centres or the Microsoft Azure Cloud and/or manual records are kept in secure locations.

7. Existence of Automated Decision Making, including Profiling

7.1 [Insert details]

8. Transfers to Third Countries, and Transfer Mechanism Safeguards

8.1 [Insert details] or [Capita retains all Personal Data within the UK unless agreed in writing.]

9. Right to Erasure

9.1 Capita will act upon written instructions from the Client where the right to erasure has been exercised by the Data Subject.

10. Right to Rectification

10.1 The Client shall advise Capita of any requirement to rectify inaccurate personal data concerning data subjects without delay where an error is reported.





11. Data Retention Period

- 11.1 Unless otherwise agreed Capita will store Client Data for no more than thirty (30) days following the process for which this was provided. Alternative retention lengths for Client Data shall be agreed in writing.

12. Capita's Sub-Processors

- 12.1 [Insert details]

