

This Agreement sets out the terms and conditions upon which Capita will provide translation and/ or interpreting services to the Customer.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, unless the context otherwise requires:

“Affiliate” means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee;

“Agreement” means this agreement comprising the clauses, Schedules hereto the Quotation and the Order hereto;

“Applicable Law” means any law for the purposes of anti-bribery and corruption or anti-money laundering;

“API” means the application programming interface provided by Capita to the Customer that enables the transfer of Original Works and Translated Works and/or Work Requests, Quotations and Orders in a prompt and secure manner;

“Business Day” means any day outside weekends and UK bank holidays between 8am and 6pm (GMT);

“Capita” means Capita Translation and Limited registered in England, (No. 05122429), the registered office of which is at 65 Gresham Street, London, EC2V 7NQ;

“Charges” means the charges payable by the Customer to Capita for the provision of the Services as set out in the Quotation;

“Customer” means the company, firm, body or person whose name and details appear on the Quotation to whom Capita is to provide the Services under this Agreement;

“Data Protection Laws” means:

(a) up to and including 24 May 2018, EC Data Protection Directive 95/46/EC and the United Kingdom Data Protection Act 1998;

(b) on and from 25 May 2018, the Data Protection Legislation as defined in Schedule 2 (Data Protection); and

(c) all laws and regulations and sector recommendations containing rules for the protection of individuals with regard to the Processing of Personal Data, including without limitation security requirements for, and the free movement of, Personal Data;

“Effective Date” means the date of the Order;

“Face to Face Interpreting” means the provision of an Interpreter to attend a face to face appointment between the Customer and the service user at a Customer venue. The Interpreter will interpret on behalf of the Requester to ensure understanding between parties. This would include interpretation of verbal and non-verbal languages, including but not limited to, British Sign Language and Deaf Blind Manual services. These services are provided by Capita approved Sub-contractors.

“Force Majeure” means any act, omission, event or circumstance, beyond the reasonable control of the party affected, including but not limited to, any act of God, fire, disaster, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw materials, energy or other supplies, explosion, industrial dispute affecting a third party for which a substitute third party is not reasonably available, breakdown of plant or machinery, computer system failure, flood, severe weather conditions, riots, accident, or any act of any governmental, regulatory or other official body;

“Good Industry Practice” means the exercise of that degree of skill, care, diligence prudence and foresight that would ordinarily be expected from a skilled and experienced person seeking in good faith to comply with its contractual obligations under this Agreement and all applicable law and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Agreement;

“Index” means the percentage change recorded in the “all items” figure of the Index of Retail Prices published by the Office for National Statistics or any successor body for the preceding twelve month period;

“Inducement” means (i) any payment, gift, consideration, benefit or advantage of any kind, which is (or is agreed to be) offered, promised, given, authorised, requested, accepted or agreed, whether directly or indirectly (through one or more intermediaries) which could act as an inducement or reward, for any form of improper conduct by any person in connection with their official, public, fiduciary, employment or business role, duties or functions; and/or (ii) anything that would amount to an offence of bribery or corruption under Applicable Law; and/or (iii) any facilitation payment; and “Induce”, “Induced”, “Inducing” and other variants of “Inducement” shall be construed accordingly;

“Intellectual Property Rights” means all rights in patents (including applications for patent protection), trademarks, service marks, design rights (whether registered or unregistered, legal

or beneficial, and including semi-conductor topographies), copyright (including rights in computer software), database rights, sui generis rights, confidential information, trade secrets, trade or business names, service marks and protections from trademark dilution or otherwise protected trademarks, publicity rights; domain names and other similar rights or obligations whether registerable or not in any country and applications for any of the foregoing;

“Interpreter” or “Translator” means the linguists used by Capita in the provision of the Services;

“Law” means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any applicable guidance, direction or determination with which Capita and/or the Customer is bound to comply by Law or which are generally complied with by companies in a similar market to Capita to the extent that the same are published and publicly available or the existence or contents of them have been notified to Capita by the Customer; and
- (d) any applicable judgment of a relevant court of Law which is binding precedent;

“Machine Translation Engine” means an engine which is built by Capita using various pieces of corpora including but not limited to content readily available on the internet, Original Works, Translated Works and glossaries.

“Order” means an order for the Services received by Capita from the Customer by way of a purchase order, acceptance via SmartMATE (or any other on-line platform agreed between the parties) or written confirmation (including via email) in response to a Quotation as confirmation that the Customer accepts the Quotation and for Capita to provide the Services;

“Original Works” means the documents, files, materials and works provided by the Customer for the purposes of carrying out the Services;

“Pre-existing Intellectual Property” means any Intellectual Property Rights, which are owned by or licensed to each party prior to the Effective Date;

“Public Official” means any person holding a legislative, administrative or judicial position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (as defined in the UK Bribery Act 2010 and/or any other Applicable Law) or a political party or organisation, or a candidate for any such office;

“Quotation” means the provision of a price breakdown for Services in response to a Work Request by the Customer and which specifies the Charges. Capita may submit the quotation

via email or via SmartMATE (or another on-line platform) for acceptance by the Customer within 30 (thirty) days of such quotation;

“**Relevant Supplier**” means Capita or the representative member of any VAT group of which Capita is at any relevant time a member;

“**Requester**” means the Customer or the service user requiring the Services;

“**Review Cycle**” means where Capita have completed Translated Works but the Requester sends it to a colleague within the Customer organisation for their approval / input / and Capita are required to wait for feedback before invoicing;

“**Services**” means the services provided to the Customer by Capita under this Agreement and set out within the Quotation and in response to an Order. The services available for the Customer to access are set out in Schedule 1;

“**SmartMATE**” means Capita’s on-line platform that may be made available to and accessed by the Customer through which the Customer may submit Work Requests, receive Quotations, accept Quotations and submit Orders, send Original Works to Capita, receive Translated Works, monitor the status of Work Requests and Orders, and access SmartMATE MT and any other software application(s) made available to the Customer by Capita from time to time;

“**SmartMATE MT**” means a software application accessed via SmartMATE that provides access to secure and customisable machine translation engines.

“**Staff**” means the natural persons who provide the Services on behalf of Capita, who may be employees of Capita or Sub-contractors, self-employed or supplied by a Sub-contractor or Sub-contractors;

“**Sub-contractor**” means an Interpreter, a Translator and/or a person and/or an agency providing elements of the Services to Capita;

“**Telephone Interpreting**” means a service where the service user can call a designated telephone number and be connected to an Interpreter;

“**Translation Memory**” means the bilingual Customer specific database holding all previous translations completed by Capita;

“**Translated Works**” means the result of all translations of Original Works and Services required to be undertaken by Capita on behalf of the Customer under this Agreement;

“**Work Request**” means a request for Services indicating that the Customer wishes to purchase the Services, such request being delivered via SmartMate, an API, email or any other job submission system as agreed between the parties from time to time.

1.2 In this Agreement, unless the context otherwise requires:

- a) A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and includes any subordinate legislation for the time being in force made under it;
- b) Headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- c) General words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- d) The Quotation and Order form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Quotation and Order;
- e) To the extent that there is an inconsistency between the terms of the body of this Agreement, the Quotation and the Order, the terms of the body of this Agreement shall prevail. For the avoidance of doubt any agreed changes to the Agreement in accordance with clause 18 (Change Control) of this Agreement shall form part of this Agreement and such change shall prevail;
- f) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); any individual, firm, association or partnership, government or state;
- g) Words in the singular shall include the plural and vice versa and words in one gender include both genders;
- h) Unless otherwise stated, any reference in this Agreement to a clause or Schedule is a reference to a clause or Schedule of this Agreement and references in any Schedule to paragraphs relate to the paragraphs in that Schedule.
- i) "Including", "included", "include", "such as", "comprising", "comprise" and the like shall be deemed to be completed by the expression "but not limited to".
- j) a reference to any party includes its successors in title and permitted assignees;
- k) The following Schedules shall form part of this Agreement

Schedule 1: Services

Schedule 2: Data Protection

2. SERVICES

- 2.1 The Customer appoints Capita to provide the Services and Capita agrees to provide the Services in response to an Order on the terms contained in this Agreement.

- 2.2 Quotations are not binding on Capita and a contract will only come into being when Capita issues a written confirmation of the Order, or when Capita delivers the Translated Works to the Customer, whichever occurs first.

3. DELIVERY

- 3.1 The dates for delivery of the Translated Works, or the dates for carrying out the Services, are approximate only and, unless otherwise expressly agreed by Capita, time is not of the essence for delivery or performance, and no delay shall entitle the Customer to reject any delivery or performance or to repudiate or terminate the Agreement.

4. CAPITA OBLIGATIONS AND WARRANTIES

- 4.1 Capita undertakes and agrees with the Customer that it shall at all times during the continuance of this Agreement, perform or procure the performance of the Services in accordance with Good Industry Practice.
- 4.2 Capita shall use all reasonable care and skill in selecting the appropriate and qualified resource to perform the Services in accordance with the terms of this Agreement.
- 4.3 Capita will use reasonable endeavours to provide the Services to meet the requirements of the Customer set out the Quotation. Subject to clause 15, the Customer acknowledges that any Original Works, Translated Works and Services submitted by either party over the internet cannot be guaranteed to be free from the risk of interception or error free even if transmitted in encrypted form and that Capita has no liability for such loss, corruption or interception of any Original Works or Translated Works or Services.
- 4.4 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of the Services or SmartMATE will be assumed by Capita and except as expressly provided in this Agreement all such warranties, conditions, undertaking and terms are excluded to the extent permitted by law.
- 4.5 Capita shall not be responsible for checking the accuracy of the Original Works.
- 4.6 Capita shall only be obliged to retain Original Works and Translated Works in any format (including electronic format and hard copy versions of Original Works and Translated Works) for the purposes of returning the same to the Customer on or after termination or expiry of this Agreement or upon reasonable request from Customer at any point during the continuance of this Agreement, for a period of 12 (twelve) months from receipt of the Original Works by Capita. Capita shall not be obliged to provide any Original Works or Translated Works to the Customer on the expiry of 12 (twelve) months of receiving Original Works from the Customer.

5. CUSTOMER'S OBLIGATIONS AND WARRANTIES

- 5.1 The Customer warrants, undertakes and agrees with Capita that it shall at all times during the continuance of this Agreement:
- 5.1.1 obtain and maintain all consents, permissions and licences necessary to enable Capita to perform its obligations under this Agreement; and
 - 5.1.2 provide sufficient information and materials to Capita as reasonably requested by Capita in the provision of the Services and performance of its obligations under this Agreement; and
 - 5.1.3 comply with the terms of any software licence agreement in place from time to time between the Parties; and
 - 5.1.4 have all requisite corporate power and authority to enter into this Agreement.
- 5.2 Unless otherwise agreed, the Customer appoints Capita as sole supplier to the Customer for the Services and the Customer therefore undertakes that it will not appoint any person other than Capita to supply the Services to the Customer.
- 5.3 In the event the Customer requires Capita to provide the Services on Customers premises, or any other premises designated by the Customer, the Customer shall:
- 5.3.1 Assign members of staff with suitable skill and experience to be responsible for Capita activities;
 - 5.3.2 Provide such access to premises, systems and other facilities which may be reasonably required by Capita;
 - 5.3.3 Provide such information as may be required by Capita to carry out the Services and ensure all such information is correct and accurate;
 - 5.3.4 Ensure that all necessary safety and security precautions are in place at Customers premises.
- 5.4 Capita shall be entitled to charge the Customer for any additional costs and expenses which Capita may incur as a result of any hazardous conditions or material encountered at the Customer premises.
- 5.5 Capita shall not be obliged to continue to perform the Services where the Customer breaches any of the warranties given by the Customer in this clause 5, or where Capita considers there is a safety hazard or such performance would represent a breach of law.
- 5.6 Where the Customer does not explicitly inform Capita in writing prior to Capita providing the Customer a Quotation that a Review Cycle is required in accordance with clause 6.16 then if the Customer should fail to acknowledge its acceptance of the Translated Works or Services in

writing, within five (5) days of Capita providing the Services or Translated Works, the said failure shall be deemed an acceptance of such Services or Translated Works. For the avoidance of doubt the Customer shall notify Capita of any complaint, errors and/or request amendments with respect to the Services or Translated Works within 30 (thirty) days of receipt of the same. Requests for amendments after 30 (thirty) days of receipt by Customer of the Translated Works or Services may incur additional charges. Unless otherwise agreed, Capita shall only accept requests for amendments in ttx, bilingual word or annotated PDF file format.

6. CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services, the Customer shall pay Capita the Charges set out in the Quotation and in accordance with this Agreement.
- 6.2 Capita will invoice the Customer for the Charges, together with any applicable VAT and/or other local taxes as applicable which shall be payable by Customer, in accordance with this Clause 6 and the provisions of the Quotation.
- 6.3 Where applicable on each anniversary of this Agreement, the Charges shall be reviewed in line with the Index.
- 6.4 The Charges shall be exclusive of value added tax (VAT) (if any) or any other local applicable equivalent taxes, or other government excise or sales duties and taxes in force from time to time, which shall be paid additionally, where applicable, by the Customer at the rate and the manner prescribed by law from time to time. Capita shall invoice the Customer for all appropriate taxes and expenses for which Capita is obligated to collect. The Customer shall be liable to pay any penalties or interest on such taxes which are payable by Capita as a result of any delay by the Customer in paying such taxes.
- 6.5 The parties acknowledge that the Charges have been calculated on the assumption that the Relevant Supplier is entitled to full recovery of input VAT wholly or partly attributable to the provision of the Services. If for any reason, whatsoever, there is a change in VAT rates or the applicability of VAT or the amount of VAT due or paid then the parties will agree revisions to Charges to restore them to the same position as they had been in prior to the relevant change.
- 6.6 Payment of all Charges and invoices shall be made by the Customer in full and in cleared funds, within 30 (thirty) days from the date of invoice. All payments shall be made without deduction or set-off.
- 6.7 In the event that the Customer fails to pay any undisputed amounts when due, Capita may, provided it has given a minimum of 30 (thirty) days' notice to the Customer of such failure, and such notice has expired, cease accepting any new Work Requests and/or Orders for Services from the Customer until full payment for the outstanding amount is received.
- 6.8 Capita reserves the right to charge interest on overdue sums, such interest to be accruing and calculated daily on the amount outstanding at the rate of 4% (four per cent) per annum above the published base rate of Barclays Bank plc. from time to time. In addition to this an

administration charge of £50.00 (fifty pounds) will be applied after 60 (sixty) days and a further £50 after 90 (ninety) days. For foreign currencies the exchange rate will be taken from HSBC Bank on the appropriate day.

6.9 Disputed Invoices

6.9.1 If the Customer disputes, in good faith, any items on an invoice in whole or in part the Customer shall notify Capita of the reasons within 14 (fourteen) days.

6.9.2 Capita and the Customer shall use their respective reasonable endeavours to resolve any such dispute in accordance with clause 17 (Dispute Resolution).

6.9.3 On settlement of the dispute and dependent upon the outcome Capita shall either submit an invoice for sums due and the Customer shall make the appropriate payment in accordance with the provisions of clause 6.6 or Capita shall issue a credit note to Customer for the sums in dispute.

6.10 Any payments made by or due from the Customer under this Agreement shall be free and clear of all taxation whatsoever save only for any deductions or withholdings required by law.

6.11 If any deductions or withholdings are required by law, the Customer shall be liable under this sub-clause 6.11 to pay to Capita such further sums as will ensure that the aggregate of the sums paid or payable under this sub-clause and clause 6 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 under clause 6 in the absence of any such deductions or withholdings.

6.12 The parties shall use commercially reasonable efforts to do all such acts and to sign all such documents as will enable them to minimize the amount of any such withholding tax obligation. 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, the paying party shall deduct any withholding taxes from payment and pay such withholding or similar tax to the appropriate government authority, deduct the amount paid from the amount due to the receiving party and secure and send to the receiving party proper evidence of payment of all withholding tax and other certificates that might be required and sufficient to allow Capita to document such tax withholdings adequately for purposes of claiming foreign tax credits and similar benefits.

6.13 Quotations shall not be binding on Capita and are given on the basis that the terms quoted will remain open for acceptance by the Customer to place an Order for 30 days (thirty) from the date of Quotation.

6.14 Quotations are given on the basis of a description given by the Customer or its authorised representatives of the Original Works, the purpose of the translation and any other relevant instructions given to Capita necessary to enable Capita to perform the Services. Such Quotations may be amended at any time if, in Capita's sole opinion, the actual Original Works received from the Customer differs from or is inadequate or inaccurate to the description, purpose or

instructions relating to the Original Works received by Capita prior to providing a Quotation or the description, purpose or instruction is inadequate or inaccurate to the relevant quotation/order.

- 6.15 Services lasting over 21 (twenty one) days will be invoiced 50% (fifty percent) on commencement and 50% (fifty percent) on completion. Services running under 21 (twenty one) days will be invoiced in full on completion.
- 6.16 Where a Review Cycle is required by the Customer the Customer shall inform Capita in writing prior to Capita providing a Quotation. Projects which require a Review Cycle will be invoiced: (a) 50% (fifty percent) on delivery for review and 50% (fifty percent) balance on completion; or (b) in full 30 (thirty) days after delivery for review, whichever is the earlier. For the avoidance of doubt, the Customer shall be in breach of its payment obligations under this Agreement where there is a delay in payment due to Customer Review Cycles being prolonged. In any event a Review Cycle shall not exceed 6 (six) months. In the event that a Review Cycle does exceed 6 (six) months Capita shall apply a surcharge to handle and implement any required changes to the Translated Works.
- 6.17 Unless agreed in writing to the contrary the Parties agree that Charges shall in be pounds sterling. Where the agreed Charges are in any other currency including but not limited to Euros or US Dollars the Parties shall review the same every 3 (three) months in line with exchange rates.
- 6.18 In the event that a Capita is required to issue the Customer with a credit note due to incorrect information supplied by the Customer a £20 (twenty pounds) admin fee shall be applied by Capita.

7. TERM AND TERMINATION

- 7.1 Subject to clause 7.2, this Agreement shall commence on the Effective Date and shall continue in force until the Services set out in the Quotation have been completed in accordance with the terms of this Agreement.
- 7.2 Either party may terminate this Agreement immediately if:
- 7.2.1 the other party commits any material breach of this Agreement and fails to remedy such breach within 30 (thirty) days of written notice notifying the breach and requiring its remedy;
- 7.2.2 the other party becomes bankrupt or makes any arrangement with or for the benefits of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bone fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed of the whole or substantially the whole of its undertakings or if any distress or execution is threatened or levied upon any property of the other party or if the other party is unable to pay its debts as they fall due; or

- 7.2.3 an event of Force Majeure which prevents the supply of the Services persists for 3 (three) months or more.
- 7.3 Where the Customer has placed an Order and subsequently requests to cancel such Order for any reason whatsoever, the full Charges for the Order shall remain payable by the Customer unless otherwise agreed in advance by both parties.
- 7.4 Where the Customer requires a reduced scope of Services under an Order Capita shall be paid for all Services already delivered with respect to the Order and the any changes to the scope of Services shall be subject to clause 19.

8. CONSEQUENCES OF TERMINATION

- 8.1 Upon termination or expiry of this Agreement for any reason whatsoever:
- 8.1.1 Capita shall cease to perform any of the Services;
- 8.1.2 any outstanding Charges shall remain due and payable by the Customer to Capita in accordance with the terms of this Agreement within 30 (thirty) days of the date of invoice and, in respect of Services supplied but for which no invoice has been submitted, Capita may submit an invoice, which shall be payable within 30 (thirty) days of the date of invoice except where any invoice is disputed by the Customer which shall be resolved in accordance with clause 17;
- 8.1.3 Capita shall deliver to the Customer, at the Customer's expense and where practicable, all databases, Original Works and other materials supplied to Capita, except as required by law or to maintain proper books and records;
- 8.1.4 each party shall return to the other any of the other party's Confidential Information;
- 8.1.5 the Customer shall pay to Capita any necessary breakage costs or any unrecovered investment balances; and
- 8.1.6 the Customer's license to use and access SmartMATE, SmartMATE MT, any other software application provided to the Customer, and API (as applicable) shall automatically terminate.
- 8.2 Termination of this Agreement does not affect either party's accrued rights, remedies and obligations at the date of termination and the continuation of any provision expressly stated to survive or implicitly surviving termination or expiry shall not be affected. For the avoidance of doubt, termination or expiry of this Agreement will not relieve the Customer of its obligation to pay the Charges in respect of any Services supplied by Capita to Customer prior to the date of termination or expiry.

9. CONFIDENTIALITY

- 9.1 In this Agreement “Confidential Information” shall mean any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, any information relating to that party's services, operations, plans or intentions, service information, design rights, trade secrets, market opportunities, technical know-how, business affairs or those of its clients and is disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by either party (“the Disclosing Party”) to the other (“the Receiving Party”). Confidential Information shall also include the terms of this Agreement.
- 9.2 The Receiving Party shall only use the Confidential Information solely for the purposes of performing its obligations in accordance with the terms of this Agreement.
- 9.3 The Receiving Party will exercise in relation to the Disclosing Party's Confidential Information no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information and in any event will exercise a reasonable and appropriate degree of care and protection.
- 9.4 The Receiving Party undertakes not to disclose any of the Disclosing Party's Confidential Information to any third party except that it may disclose such Confidential Information to its employees, professional advisors, personnel, contractors, agents, sub-contractors or any person whose duties reasonably require such disclosure but only to the extent necessary for the performance of its obligations under this Agreement. The Receiving Party shall ensure that any third party to whom it discloses the Confidential Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in this Agreement.
- 9.5 The Receiving Party undertakes to destroy or subject to clause 4.6 return (at the Disclosing Party's discretion) to the Disclosing Party all of the Disclosing Party's Confidential Information in its possession, custody or control on receipt of a request to that effect and, in any event, upon termination or expiry of this Agreement.
- 9.6 Without prejudice to any other rights or remedies that either party may be entitled to, the parties acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both Parties will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.
- 9.7 The provisions of this Clause 9 shall not apply to any Confidential Information:
- 9.7.1 to the extent that it is or comes into the public domain otherwise than as a result of a breach of this Agreement by the Receiving Party;
- 9.7.2 which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence; or

- 9.7.3 has been independently developed by the Receiving Party without access to the Confidential Information; or
- 9.7.4 which after being disclosed to the Receiving Party, is disclosed to that party again by a third party at liberty to disclose it to that party;
- 9.7.5 Which is required to be disclosed by law or any regulatory authority, provided that the party that is required to disclose the Confidential Information, where practicable and legitimate to do so:
 - 9.7.5.1 promptly notifies the owner of any such requirement; and
 - 9.7.5.2 co-operates with the owner regarding the manner, scope or timing of such disclosure or any action that the owner may take to challenge the validity of such requirement.
- 9.8 Notwithstanding termination or expiry of this Agreement, the obligations of each party concerning confidentiality shall terminate 5 (five) years following receipt of the Confidential Information.

10. LIMITATION OF LIABILITY

- 10.1 Notwithstanding anything else in this Agreement, the aggregate liability of either party to the other under or in connection with this Agreement, whether arising under contract or by way of indemnity, negligence or otherwise, shall, subject to Clause 10.2 below, be limited to an aggregate liability of 100% (one hundred percent) of the Charges paid or payable in the calendar year in which the event giving rise to such liability occurred.
- 10.2 Exclusions to limit of liability in clause 10.1
 - 10.2.1 The limitation of liability set out in Clause 10.1 above does not apply to:
 - 10.2.1.1 either party's liability arising from death or injury to persons; or
 - 10.2.1.2 either parties liability arising as a result of fraud; or
 - 10.2.1.3 the Customers indemnification requirements under clauses 10.6; 10.9; 14.5; 20.1 and 1.7.1 (b) of Schedule 2; or
 - 10.2.1.4 the Customer payment obligations under clause 6 and 12to which no limit applies.
- 10.3 Exclusion of Consequential Loss
 - 10.3.1 For the purposes of this clause 10.3 the expression "Consequential Loss" shall mean:
 - 10.3.1.1 consequential, special, pure economic or indirect loss or damage; and

10.3.1.2 loss and / or deferral of production, loss of product, use, business, capital, revenue, profit or anticipated profits (if any), business opportunities, goodwill, goods, contracts, anticipated savings, corruption of data or information and similar losses in each case whether direct or indirect to the extent that these are not included in 10.3.1.1, and whether or not reasonably foreseeable by either party or that party was aware of the possibility of that loss or damage arising.

10.3.2 Neither party shall, in any event, be liable to the other for Consequential Loss.

10.4 Capita shall not, in any event, be liable for any loss, damage, costs or expenses suffered by the Customer as a result of any claim against the Customer made by a third party.

10.5 Except in respect of injury to or death of any person, Capita shall not in any event be liable for any claim arising out of the provision of the Services unless the Customer has notified Capita of such claim within a reasonable time of delivery of the Translated Works or Services to which the claim relates.

10.6 Capita shall in no circumstances be liable for loss or damage caused by any default, act or omission on the part of Customer its agents, subcontractors, contractors or clients and Customer agrees to indemnify, defend and hold harmless Capita in respect of any claims by third parties which are caused by or arise from any reasonable act by Capita carried out pursuant to instructions issued by Customer.

10.7 The parties agree that the foregoing limitations and exclusions represent the parties' agreement based on the level of risk assumed by Capita and the Customer in connection with this Agreement.

10.8 The parties expressly agree that should any limitation or provision contained in this clause 10 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

10.9 Customer shall be responsible for all content contained within the literature and Original Works provided by Customer to Capita for translation and Customer shall upon demand indemnify and keep indemnified Capita in full against all losses, damages, costs, charges, claims and expenses of whatever nature incurred directly or indirectly as a result of any claim by a third party relating to the content of the literature and Original Works provided by Customer.

11. SUB-CONTRACTORS

11.1 Capita may supply the Services through Sub-contractors.

11.2 Capita shall be entitled to select such Sub-contractors as it thinks fit to perform the Services and no prior consent of the Customer (written or verbal) shall be required with respect to the use of Sub-contractors.

- 11.3 Sub-contracting to Sub-contractors shall not in any way relieve Capita from its obligations to provide the Services and Capita shall, subject to the provisions of clauses 5 and 10 of this Agreement, be liable for any Sub-contractor's performance of the Services.

12. NON-SOLICITATION

Unless otherwise agreed by Capita, the Customer (which for the purposes of this clause includes any of the Customer's Affiliates) shall not during the term of this Agreement and for a period of one year after termination of the Agreement, either directly or indirectly, on its account or for any other person, firm or company solicit, employ, endeavour to entice away from Capita or use the services of Capita's Staff or any of its Sub-contractors. In the event of any breach under this clause, the Customer shall pay to Capita an amount equal to the aggregate remuneration paid by Capita to that member of Staff or Subcontractor for the year immediately prior to the date on which the Customer employed or used the services of that member of Staff or Subcontractor.

13. SmartMATE

13.1 To facilitate the use of the Services, Capita may offer the Customer use of SmartMATE. If the Customer chooses to use SmartMATE, Capita shall grant the Customer a personal, world-wide, non-transferrable, non-assignable, non-sublicensable, and non-exclusive license to use SmartMATE as part of the Services for the term of this Agreement and in the manner permitted by this Agreement.

13.2 SmartMATE is provided to the Customer on an "as-is" and "as available" basis. Capita does not guarantee the availability or performance of SmartMATE and the Customer's use and access to SmartMATE may be limited, suspended or terminated at any time. Capita may from time to time enhance, update, alter, improve, modify, delete or suspend (either temporarily or permanently) features and/or functionalities of SmartMATE.

13.3 The Customer shall be responsible for maintaining the confidentiality of passwords associated any account used by the Customer to access SmartMATE. The Customer shall not authorise any third parties to use SmartMATE without the prior written consent of Capita. The Customer shall be solely responsible to Capita for all activities that occur under the Customer's account. If the Customer becomes aware of any unauthorised use of the SmartMATE, the Customer shall immediately notify Capita.

13.4 The Customer warrants that it shall not and shall not permit any third party to copy, duplicate, modify, create derivative works of, reverse engineer, decompile, extract the source code from, transfer, assign, licence, distribute, sell, rent or lease SmartMATE.

14. INTELLECTUAL PROPERTY

14.1 Subject to clause 14.3, neither the Customer nor Capita shall have the right of use, other than for the purposes of this Agreement, whether directly or indirectly, of any Pre-existing Intellectual Property provided by the other Party and the Intellectual Property Rights and title in such shall remain with the Party providing such Pre-existing Intellectual Property.

- 14.2 All Intellectual Property Rights in the Original Works and, subject to payment of all Charges by Customer in accordance with this Agreement, the Translated Works developed exclusively and solely for the Customer under this Agreement shall vest in the Customer.
- 14.3 The Customer hereby grants a perpetual royalty free, irrevocable licence to Capita (and the Sub-contractors) to store and use the Original Works and the Translated Works and the Intellectual Property Rights and all know-how developed in the same.
- 14.4 For the avoidance of doubt Intellectual Property Rights and title in the SmartMATE, SmartMATE MT, Machine Translation Engine, any software application made available to the Customer by Capita, and API, including any enhancements, updates, alterations, improvements, or modifications thereto, shall vest in Capita.
- 14.5 The Customer warrants that the Original Works or instructions furnished or given by the Customer to Capita shall not cause Capita to (directly or indirectly) infringe any Intellectual Property Rights of any third party in the performance of the Services and, to the extent that Capita shall so infringe, the Customer shall upon demand indemnify and keep indemnified Capita (which for the purposes of this clause includes Capita's Staff, agents and representatives) in full against all losses, damages, costs, charges, claims and expenses of whatever nature incurred directly or indirectly as a result of such infringement.
- 14.6 The Translation Memory shall be hosted and maintained by Capita. Subject to the payment by Customer of a charge to be advised by Capita at the time of request the Customer may request and Capita shall provide the Translation Memory to the Customer.

15. DATA PROTECTION AND HANDLING

- 15.1 Where Capita is Processing Personal Data (both terms defined in the data Protection Legislation) the parties shall comply with (a) the obligations imposed on them by Data Protection Laws and (b) the obligations set out in Schedule 2 (Data Protection).

16. FORCE MAJEURE

- 16.1 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 16.2 The affected party shall notify the other party as soon as reasonably possible of the cause and the likely duration of the cause, the performance of the affected party's obligations, to the extent affected by the cause, shall be suspended during the period that the cause persists.

17. ETHICAL BEHAVIOUR

- 17.1 The Parties shall not, and each Party shall ensure that its respective Affiliates and personnel shall not, induce or do or agree to do any other act, failure to act or thing in connection with the provision of the Services or any other agreement between any Customer Affiliate and any member(s) of Capita plc. or its Subcontractors (to the extent engaged by Capita in providing the Services to the Customer), including the performance or award of any such agreement, that contravenes any Applicable Law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including:
- 17.1.1 the UK Bribery Act 2010 (and/or the laws and legislation it repeals), the Proceeds of Crime Act 2002, the Theft Act 1968, the Fraud Act 2006 and the Companies Act 2006;
- 17.1.2 in the case of a Public Official, any Applicable Law applicable to the Public Official in his capacity as such; and
- 17.1.3 the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997, which entered into force on 15 February 1999, and the commentaries to it (as amended and/or added to from time to time).
- 17.2 The Customer undertakes, warrants and represents that it shall maintain policies, procedures and guidelines that are applicable to all Customer Affiliates and Customer personnel and are intended and designed to prevent them doing or failing to do any act or thing that contravenes any Applicable Law or requirement of a regulatory authority relating to anti-bribery and corruption or anti-money laundering, including a gifts and entertainment policy requiring such persons not to undertake, offer, promise, give, authorise, request, accept or agree any Inducement (or to agree to do any of the foregoing).
- 17.3 The Customer agrees to notify Capita and confirm the same promptly in writing immediately upon discovering any instance where it has, or any of the Customer Affiliates or Customer personnel have, failed to comply with any provisions of this clause 17.
- 17.4 Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person (including any Public Official) relating to this Agreement or its subject matter.
- 17.5 Each Party shall hold harmless, indemnify and keep indemnified the other party and its successors assigns, officers, employees and representatives against losses which it suffers or incurs in connection with a breach of this clause 17. This clause 17.5 shall not require a Party to indemnify the Party for the amount of any fine constituting a criminal penalty, to the extent that such indemnity would not be permitted by Applicable Law.
- 17.6 Upon reasonable request by Capita from time to time the Parties shall meet to discuss, agree and document in accordance with clause 21.4 any additions or amendments to the requirements of this Agreement that Capita considers necessary or appropriate to comply with the

requirements of, and implement appropriate checks, controls, processes and procedures in relation to, the UK Bribery Act 2010 or any other Applicable Law relating to anti-bribery and corruption or anti-money laundering.

17.7 Without prejudice to the parties' respective obligations to comply with Applicable Law, if the Customer or its personnel receive a request to audit or for information, data, access and/or any other requirement, from any regulatory authority as contemplated by the agreement:

17.7.1 the Customer shall promptly notify Capita in writing of such request; and

17.7.2 if Capita considers that the relevant regulatory authority may be acting outside the scope of its lawful authority in making such request, Capita shall notify the Customer of the same and the Parties shall promptly discuss and agree (acting reasonably) the relevant response to that regulatory authority, provided that if Capita wishes the Customer to cooperate with the request notwithstanding any considerations as to the scope of the regulatory authority's lawful authority, the Customer shall comply with all instructions of Capita in relation to such request (subject always to the provisions of this agreement).

18. DISPUTE RESOLUTION

18.1 If a dispute arises in relation to any aspect of this Agreement, the representatives of the Customer 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.

18.2 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 18.1 above, then:

18.2.1 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

18.2.2 if the Parties so agree, the Parties may proceed to arbitration by an arbitrator recognised by the Chartered Institute of Arbitrators; or

18.2.3 the Parties may employ any other method or procedure for the resolution of disputes as may be agreed between them; and

18.2.4 if no such agreement is reached between the Parties pursuant to clauses 18.2.1 to 18.2.3 above within a period of seven (7) days, both Parties shall be entitled to pursue the matter in law.

18.3 Each Party shall provide all reasonable assistance to the other in resolving any dispute that may arise between the Parties which relates in any way to the performance, acts or omissions of the that Party.

19. CHANGE CONTROL

19.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of Capita on behalf of Capita and by a duly authorised representative of the Customer on behalf of the Customer and in accordance with Capita's standard Change Control Process which can be made available by Capita upon request. Capita shall implement agreed changes to this Agreement if the Parties have agreed this in accordance with Capita's standard Change Control Process. Such amended services and charges will be deemed to be the Services and Charges and shall take effect for the remaining term of this Agreement.

20. TUPE

20.1 If upon or at any time following commencement of this Agreement any employees of the Customer or any contractor of the Customer claims that their employment should have or has transferred to Capita as a result of the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended and / or replaced from time to time) ("the TUPE Regulations"), then:

20.1.1 Capita may, within 30 (thirty) Business Days of becoming aware of any such claim, terminate such person's employment;

20.1.2 the Customer will indemnify Capita in full against any actions, proceedings, costs, claims, demands, awards, fines, orders, expenses and liability whatsoever (including legal and other professional fees and expenses) in relation to such person whether arising directly or indirectly out of or in connection with such termination or otherwise, and against any sums payable to or in relation to such person in respect of his/her employment from the commencement of this Agreement to the date of such termination pursuant to clause 20.1.1; and

20.1.3 when reasonably required do to so by Capita, the Customer will assist Capita in taking and/or defending any proceedings by and/or against Capita in connection with the termination of such employment.

21. GENERAL

21.1 This Agreement constitutes the entire agreement and supersedes any previous agreements, prior representations (except for fraudulent representations), arrangements and understandings between the parties relating to the subject matter of this Agreement.

21.2 Each party acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained expressly in this Agreement

and, save as expressly set out in this Agreement, each party shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

- 21.3 All business with Capita relating to the provision of Services is transacted on the terms set out in this Agreement which the Customer has accepted or the Customer has deemed to have accepted upon the Effective Date.
- 21.4 This Agreement may only be capable of being varied in writing signed by a duly authorised officer or other representative of each of the Parties.
- 21.5 This Agreement is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.
- 21.6 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the Parties hereto or constitute or be deemed to constitute either Party the agent of the other for any purpose whatsoever and neither Party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.
- 21.7 Nothing in this Agreement shall render any member of the Staff or Sub-contractor an employee, agent or partner of the Customer.
- 21.8 Unless otherwise agreed in writing, no failure by either party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 21.9 This Agreement shall not give rise to any rights enforceable by a third party pursuant to the Contract (Rights of Third Parties) Act 1999 but without prejudice to any rights or remedies that exist or are available apart from that Act.
- 21.10 To give notice under this Agreement, a letter must be delivered personally or sent by pre-paid recorded first class post or facsimile transmission to the address or fax numbers within the Quotation or to any other address or fax number given in writing. The Parties may serve notice by e-mail provided that such email is followed by letter sent to the address within the Quotation. A notice delivered by hand is served when delivered, a notice sent by first class recorded post is served 48 hours after posting and a notice served by fax or email is served when the fax is sent and confirmed by a conformation receipt or email is sent.
- 21.11 These terms and conditions shall:
- 21.11.1 apply to and be incorporated into this Agreement; and
- 21.11.2 apply to and be incorporated in any Quotation and Order; and

21.11.3 prevail over the Customer's standard terms and conditions or any terms or conditions contained in, referred to, attached to or enclosed with any Customer provided documentation or otherwise including but not limited to in the Customer's purchase order, confirmation of order, Order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing which shall have no effect and this Agreement negates the same.

21.11.4 apply to all Services provided to you unless otherwise agreed between the parties in writing.

21.12 Unless otherwise agreed in writing by the Parties, the Parties agree that Capita may disclose for marketing purposes the fact that the Customer is a client of Capita. Customer agrees that Capita may use the Customer's name and logo to the extent necessary for the purpose of the provision of the Services and for marketing purposes for the duration of this Agreement.

21.13 The Customer shall not, assign or otherwise transfer any part of this Agreement without Capita's prior written consent (such consent not to be unreasonably withheld or delayed). Capita may assign, or otherwise transfer any part of this Agreement without Customer's prior written consent.

21.14 This Agreement shall be binding upon any successors in title of the Parties.

21.15 Information provided in Capita's brochures, catalogues or other published material is general description only and does not form part of this Agreement.

22. JURISDICTION

This Agreement is governed by and shall be construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1

SERVICES SCHEDULE

Capita shall perform the Services set out in this schedule in accordance this Agreement in response to Orders submitted by the Customer.

1. Description Of Services

1.1 Language services

Following receipt and acceptance of Orders requiring translation of Original Works by Capita, Capita shall produce Translated Works using experienced linguists with expertise in translating documents to ensure translation of all documents.

1.1.1 Translation standards

Each translation shall be measured against one of the following four standards. Capita's default position will be to provide the Localised Service. If the Customer requires any other service this should be agreed on an individual project basis, dependant on use case and purpose of the translation.

Service	Suitable For	Impact Level	Deliverable
LOCALISED (Core Service)	Professional	High	High quality, accurate translation localised appropriately for the specific content type, considering terminology and style.
	Marketing	High	High quality, accurate translation localised appropriately for the specific content type and adheres to on-brand messaging.
CREATIVE	Marketing	High	Fully adapted message in the target locale, keeping the same intent, style and tone of the source language.
LITERAL	Non-published	Medium	Message accurately transferred, but with no considerations on style / localisation
GIST	Non-published	Low	Enough accuracy to understood the general gist of the document.

1.1.2 Express Translation Service

If required, an express translation service can be provided which is designed to deliver translations in a faster turnaround time than the standard turnaround times defined in this schedule. This involves the selection of a number of linguists to work simultaneously on a translation project. Where timelines force simultaneous working, additional costs may be incurred and risks to translation quality and consistency may be introduced. An Express Translation Service is subject to an additional charge as agreed between the parties on an individual basis. An Express Translation Service can either be requested by the Customer or recommended by Capita through a Quotation.

1.1.3 Customer obligations for a successful translation

- 1.1.3.1 The Customer shall specify the document type (e.g. any Microsoft Office, PDF, Adobe InDesign), styles, font, character size, layout, paper size and required target format at the time each translation is requested.
- 1.1.3.2 Customer will provide final version of Original Works prior to translation commencement.
- 1.1.3.3 All deliverables will be provided in monolingual format unless expressly requested at quotation stage.
- 1.1.3.4 Unless specified otherwise, Translation Works format will match Original Works format (where possible) unless expressly requested otherwise by Customer at quotation stage and/ or otherwise recommended by Capita.
- 1.1.3.5 Quotation assumes all content within document is legible; the Customer will be notified when content is illegible.
- 1.1.3.6 The Customer shall provide including but not limited to any specific house style guides, terminology glossaries, branding/visual guides. Where these are not provided and preferences not stated, linguists will translate to their best judgement. Should latterly these decisions, in the absence of reference material, differ to the Customer's expectation, then additional costs shall apply to rectify this.
- 1.1.3.7 The Customer shall validate the quality of the Original Works to ensure consistency and accuracy prior to translation. Examples of this may be including but not limited to:
 - a) ensure singularity/plurality is consistent
 - b) ensure use of tense is consistent
 - c) ensure use of trademark indicators is consistent
 - d) ensure use of terms is consistent
 - e) ensure where same term is used but with slight variance in glossary that clear guidance is provided as to when each variant is applicable, i.e. plastic gloves, plastic gloves blue, blue plastic gloves
 - f) ensure localisation requirements are clearly defined, i.e. within un-editable graphics, URLs, brand names

Additional Services Available

Additional services, descriptions of which are provided below in paragraphs 1.2 – 1.9 of this Schedule 1 below, are available upon request by the submission by Customer of an Order or otherwise agreed with Capita and shall be subject to Capita's standard prices and rates available upon request. Capita shall invoice the Customer and Customer shall pay the applicable charges in accordance with this Agreement for each service.

1.2 Face to Face Interpreting

Following receipt of a booking request via Capita's Customer Portal, telephone or email, Capita shall endeavour to source a Face to Face interpreter to fulfil the Customer's requirements from their register of qualified and vetted interpreters or from an approved sub-contractor. This would normally be fulfilled by physical attendance of an interpreter at a Customer venue.

1.3 On Demand Telephone Interpreting

Capita can provide a Telephone Interpreting Service that is available on demand with no requirement for pre-booking. The service would be provided on a free phone 0800 number, but will be chargeable in accordance with Capita's standard prices and rates. The Customer will be required to provide their unique PIN which will be provided on request in order to access the service and retain accuracy for invoicing and management information purposes.

1.4 Transcription

A transcription service converts speech into a written or electronic text document. There are different variations of this service, all of which result in a text document containing the dialogue from the source audio or video file.

- a) Basic Same Language Transcription - consists of transcribing the source text only.
- b) Standard Translated Transcription – consists of translating and transcribing in one step, only the target language will be transcribed.
- c) Source and Target Transcription - consists both of the above.

We also offer the following transcription services:

- a) Verbatim

- b) Technical
- c) Revised Summary
- d) Script Style
- e) Multiple Speakers

1.5 Desktop Publishing

Following translation, Capita's expert typesetters can ensure that the target document is both suitable for the target market and mirrors the original format of the document. Capita works with a variety of document types including InDesign, Quark, CoralDraw and Microsoft office Suite.

1.6 SEO – Keyword Research

The aim of this is to undertake a research exercise to identify the highest searched and most lucrative keywords that a website should contain so as to aim to rank highly in the search engines such as Google etc. This might be done by taking an existing English keyword list and researching and translating foreign language alternatives, creating a keyword list based on an existing foreign language site, or creating a keyword list using an English site as reference.

1.7 Audio Visual

Subtitling is a specialised area of translation, and is part of a broader field of audio-visual translation which includes dubbing, voiceover and audio-description. The audio content has to first be transcribed and time-coded to produce an English transcription which is then translated, edited and proofread into the target languages. The target language transcriptions will be embedded onto a video and exported to the requested video format.

For voiceover work, recordings are carried out in a professional recording studio, recorded by experienced native voice over artists. The audio is then edited and cleaned by a sound technician.

1.8 Transcreation Services

Transcreation is the recreation of a text for the target audience, i.e. "translating" and "recreating" the text at the same time. A transcreated text contains all the aspects of the source text (message, style, images and emotions, cultural background) but goes beyond word limitations and rather looks to convey a message.

A transcreator is free to add or remove source text if it is not appropriate for the target audience whereas a translator is not. New content is developed or adapted for the given target audience while keeping the same intent, style and tone of the original.

1.9 Copywriting – English or multilingual copywriting

Capita can author the content in English or directly in the target language in accordance with a brief defined by the Customer which refers (but is not limited to) to the style, audience, objective of the text.

1.10 SmartMATE MT – Machine Translation Engine

SmartMATE MT is an advanced machine translation engine that performs instant translations of text and files through a secure user interface and API and allows for file processing and filtering, including OCR. SmartMATE MT can be customised using the Customer's translations and glossaries.

Capita will grant the Customer access to use SmartMATE MT on a pre-paid volume basis for the term of the Agreement or for a set period of time, as set out in the Charges Schedule.

In consideration of payment of the Charges for SmartMATE MT, Capita grants the Customer a personal, world-wide, non-transferable, non-assignable, non-sublicensable, and non-exclusive license to use SmartMATE MT for term of the Agreement or for the period of time set out in the Charges Schedule. Capita provides SmartMATE MT on an "as-is" basis. Notwithstanding anything to the contrary in this Agreement, Capita does not warrant that SmartMATE MT will meet the Customer's requirements, will be uninterrupted or error free. Capita endeavours to ensure that SmartMATE MT has an availability uptime of 99.5%; however, Capita does not guarantee the availability or performance of SmartMATE MT. Capita may from time to time enhance, update, alter, improve, fix errors, and modify SmartMATE MT.

The Customer warrants that it shall not and shall not permit any third party to copy, duplicate, modify, create derivative works of, reverse engineer, decompile, extract the source code from, transfer, assign, licence, distribute, sell, rent or lease SmartMATE MT.

SmartMATE MT is a machine translation and any outputs will not be checked or otherwise verified by Capita. Capita does not guarantee or warrant the accuracy of the machine translation or that any output will be error free and the Customer acknowledges that the standard of the translation will not be to the same level of a bespoke translation. Notwithstanding anything to contrary in this Agreement, Capita shall not be liable for the outputs of SmartMATE MT and shall not be required to remedy any inaccuracies or errors in the output.

1.11 API

CAPITA

Capita may agree to provide an API to enable the transfer of files easily, securely and quickly. The API creates a direct link to Capita's professional translation services and can integrate the Customer's applications directly into Capita's translation ecosystem.

The terms and charges for any bespoke customisation, configuration and integration required to the API will be agreed between the parties.

2 Service Specification – Services

2.1 Capita shall provide sufficient staff and freelance linguist resources to provide the Service levels defined above. This does not constitute a guarantee that a freelance linguist will be available in every instance.

2.2 For all projects, Capita shall inform the Customer as soon as reasonably practicable if it becomes apparent that any deadline will not be met and / or Capita requires more time than previously estimated, to produce the Translated Works and perform its obligations under the terms of this Agreement.

SCHEDULE 2

DATA PROTECTION

1 DATA PROTECTION

1.1 Definitions and Interpretation

DEFINITIONS

1.1.1 In this clause 1 (*Data Protection*), the following terms have the following meanings:

Brexit	means withdrawal of the United Kingdom from the European Union;
Customer Personal Data	means Personal Data which is: (a) transmitted by or on behalf of Customer to, or is otherwise Processed by, Capita under this Agreement; or (b) generated under this Agreement;
Controller	has the meaning set out in the Data Protection Legislation
Customer Legacy Issue	means: a) any error, issue or failure in the data, systems, business processes, administrative process, operational IT activity, security, procedures or Customer systems undertaken or used by Capita in relation to the Services which existed at (including those which were not identified prior to) the Effective Date and which (i) results in an error, failure or issue in the output of such data, business process, procedure or system or (ii) breaches, or contributes to the breach of any applicable law or regulatory requirement or (iii) has an adverse impact on the provision of the Services; or b) any errors or incompleteness in any Customer Data that have arisen prior to the Effective Date, giving rise to a breach of applicable law or a regulatory breach.
Data Protection Legislation	means the GDPR or any replacement legislation applicable in England and Wales from time to time (whether or not as a result of Brexit) and any other applicable laws relating to the processing of personal data;

Data Subject	has the meaning set out in the Data Protection Legislation;
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;
GDPR Effective Date	means 25 May 2018 (or such other date on which the GDPR becomes applicable in England and Wales);
Lawful Grounds	means the principles and conditions relating to processing of Personal Data set out in the Data Protection Legislation;
Personal Data	has the meaning set out in the Data Protection Legislation;
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data;
Processing	has the meaning set out in the Data Protection Legislation and “ Process ” and “ Processed ” shall be construed accordingly;
Processing Activities	has the meaning given in clause 1.2.1(a);
Processing Security Measures	has the meaning given in clause 1.3.4;
Processor	has the meaning given in the Data Protection Legislation;
Security Considerations	means, in relation to the Processing Security Measures: (a) the state of the art, the costs of implementation, the nature, scope, context and purposes of the Processing Activities as well as the risk of varying likelihood and severity for the rights and freedoms of the relevant Data Subjects; and (b) the risks that are presented by the Processing Activities, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data transmitted, stored or otherwise Processed;
Sub-Processor	has the meaning given in clause Error! Reference source not found. ; and
Supervisory Authority	means the UK’s Information Commissioner’s Office or replacement authority responsible for the monitoring and enforcement of the Data Protection Legislation.

INTERPRETATION

1.1.2 On and from the GDPR Effective Date and without prejudice to clause 1.6, references in this clause 1 (*Data Protection*) to specific Articles or Chapters of the GDPR shall be construed as references to the equivalent provisions in the GDPR or, if relevant, then-current Data Protection legislation.

COMMENCEMENT

1.1.3 On and from the GDPR Effective Date the obligations set out in this clause 1 of Schedule 2 (*Data Protection*) shall apply and take effect.

1.2 Processing Activities and Status of Customer and Capita

PROCESSING ACTIVITIES

1.2.1 Customer and Capita acknowledge that:

- (a) Capita will perform Processing activities in relation to Customer Personal Data as part of the Services, with the subject-matter, duration, nature and purpose, type and categories of data

subjects as described more fully in Annex 1 to this schedule 2 (the “**Processing Activities**”); and

(b) in respect of such Processing Activities, the Customer is the Controller and Capita is the Processor for the purposes of the Data Protection Legislation.

1.2.2 Customer warrants, represents and undertakes to Capita that it has Lawful Grounds for processing the Customer Personal Data.

1.2.3 Customer shall at all times comply with its obligations under the Data Protection Legislation however, for the avoidance of doubt, the Customer agrees that where Capita has satisfied its contractual obligation under the Agreement, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

COOPERATION WITH SUPERVISORY AUTHORITY AND DATA SUBJECTS

1.2.4 Nothing in this Agreement shall prevent Capita from:

- (a) complying with its obligations under the Data Protection Legislation to cooperate with, or provide assistance or information to, a Supervisory Authority; and/or
- (b) responding to or defending any action taken against it by a Data Subject or Supervisory Authority.

This clause 1.2.4 shall take precedence over any other terms of the Agreement insofar as they relate to data protection regulation.

1.3 Capita’s obligations

PROCESSING OF CUSTOMER PERSONAL DATA

1.3.1 Capita shall:

- (a) process the Personal Data only in accordance with Customer’s documented instructions from time to time (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by Customer to Capita from time to time), including with regard to transfers of Customer Personal Data to a third country or an international organisation (which instructions are documented under clause 1.5), unless required to do so by Law; in such a case, Capita shall inform Customer of that legal requirement before Processing, unless that Law prohibits such information on important grounds of public interest;
- (b) in relation to any Staff authorised to process Customer Personal Data on Capita’s behalf, ensure that such Staff are bound by appropriate obligations of confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) comply with those information security obligations specified under clause 1.3.4;
- (d) comply with those obligations set out in clauses **Error! Reference source not found.** and **Error! Reference source not found.** in relation to the engagement of Sub-Processors; and
- (e) at the choice and cost of Customer, delete or return all the Customer Personal Data following termination or expiry of this Agreement and delete existing copies of such Customer Personal Data unless Capita is required to retain copies to comply with Law and/ or where the parties have agreed otherwise in the Agreement).

INFORMATION AND ASSISTANCE

1.3.2 Subject to clause 1.6.1, Capita shall:

- (a) taking into account the nature of the Processing Activities, assist Customer by appropriate technical and organisational measures, for the fulfilment of Customer's obligation to respond to requests for exercising a Data Subject's rights in accordance with Chapter III (Rights of the Data Subject) of the GDPR;
- (b) assist Customer in ensuring compliance with the obligations under Articles 32 (security of processing), 35 (data protection impact assessments) and 36 (prior consultation) of the GDPR, taking into account the nature of the Processing Activities and the information available to Capita and provided always that nothing in this sub-clause shall oblige Capita to provide assistance which does not relate directly to the Services (including Processing Activities) performed pursuant to this Agreement;
- (c) Capita shall inform the Customer in writing if, in Capita's opinion, following any Customer instructions would give rise to a breach of Data Protection Legislation but only in relation to a breach of GDPR and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, Customer, acknowledges that any information Capita provides is not legal advice or guidance in anyway whatsoever, and that Capita makes no warranty or representation regarding the information. Capita has no liability to Customer for the content, nor any reliance by the Customer on the information communicated under this clause 1.3.2 (c).
- (d) make available to Customer all information necessary to demonstrate compliance with its obligations set out in this clause 1.3 (*Capita's Obligations*) and allow for and contribute to audits, including inspections in respect of the same, conducted by Customer or another auditor mandated by Customer, provided that:
 - (i) Customer shall, if requested by Capita, procure that its third party auditors enter into confidentiality undertakings with Capita that are no less onerous than those set out in this Agreement and such third party auditors shall not be competitors of Capita;
 - (ii) Customer shall be permitted to conduct no more than [one] such audit or inspection in any Contract Year; and
 - (iii) nothing in this clause shall permit Customer or its auditors to make unaccompanied site visits or to remotely access Capita's IT systems without Capita's written consent.

SUBJECT ACCESS REQUESTS

1.3.3 Capita shall notify Customer if it receives from a Data Subject relating the Customer Personal Data:

- (a) a request to have access to that person's Customer Personal Data; and/or
- (b) a complaint or request relating to Customer's obligations under the Data Protection Legislation, and shall assist Customer with an appropriate search of Capita's records in response to that request.

SECURITY OF PROCESSING

- 1.3.4 Subject to clause 1.6.3, Capita shall implement appropriate technical and organisational measures to ensure a level of security in respect of the Customer Personal Data that is appropriate to the risk associated with the Processing Activities (the “**Processing Security Measures**”).

APPOINTMENT OF SUB-PROCESSORS

- 1.3.5 Clause 11 of the Agreement (*Sub-Contractors*) shall apply in relation to any engagement by Capita of a Sub-Contractor to perform a Processing Activity (each a “**Sub-Processor**”).
- 1.3.6 Where Capita engages a Sub-Processor to perform any of the Processing Activities in accordance with clause **Error! Reference source not found.**, Capita shall:
- (a) remain responsible for the performance of the Processing Activities notwithstanding the appointment of a Sub-Processor; and
 - (b) to the extent relevant to such Processing Activities, ensure that the relevant Sub-Processor includes obligations on the Sub-Contractor which are no less onerous than those set out in clauses 1.3.1 and 1.3.2.

1.4 Data Breach Notification

- 1.4.1 Capita shall notify Customer without undue delay after having become aware of a Personal Data Breach. Such notification shall:
- (a) describe the nature of the Personal Data Breach, including where possible the categories and approximate number of Data Subjects concerned and the categories and approximate number of the Customer Personal Data records concerned; and
 - (b) describe the measures taken or proposed to be taken by Capita to address the Personal Data Breach, including where appropriate measures to mitigate its possible adverse effects,
- provided that where, and in so far as, it is not possible for Capita to provide the above information at the same time, the information may be provided in phases without undue further delay. Customer acknowledges and agrees that, as at the GDPR Effective Date, the Personal data Breach process that the Capita has in place is appropriate to the risk associated with the Processing Activities, having regard to the Security Considerations.
- 1.4.2 Subject to clause 1.6.1, Capita shall assist Customer in ensuring compliance with its obligations under Articles 33 (notification of a personal data breach to the Supervisory Authority) and 34 (notification of a personal data breach to the Data Subject) of the GDPR, to the extent relating to Customer Personal Data Processed by Capita under this Agreement and taking into account the nature of the Processing Activities and the information available to Capita.
- 1.4.3 In order to mitigate the impact of a Data Protection Breach, Customer shall, where practicable, prior to communicating details of a Personal Data Breach to a Supervisory Authority or any Data Subject:
- (a) consult with Capita and implement any Capita proposal on the form and content of such notification, including without limitation in relation to the description (including the description of the likely consequences) of the Data Security Breach and the measures referred to in sub-clause 1.4.3(b) below; and

- (b) afford Capita a reasonable opportunity (having regard to the circumstances of the Personal Data Breach) to propose and implement measures to address the Personal Data Breach.

1.5 International Transfers

- 1.5.1 Customer hereby consents to Capita transferring Customer Personal Data to third countries outside the European Economic Area provided that Capita complies with the specified conditions for transfer (as referenced in the table below) and procures that any onward transfers are also compliant with such conditions:

Destination	Recipient(s)	Conditions for transfer (if any)
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	Capita shall include within its standard Sub-contractor terms Data Protection Standard Contractual Clauses pursuant to Directive 95/46/EC (“Data Protection Standard Contractual Clauses”) and Capita shall enter into the same on behalf of the Customer. For these purposes the Customer shall be the Data Exporter and the Sub-contractor shall be the “Importer” as defined in Data Protection Standard Contractual Clauses. The Data Protection Standard Contractual Clauses in the subcontractor agreement are attached at annex 2 to this Schedule 2.
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	Capita shall include confidentiality provisions within its agreements with Subcontractors.
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	Capita shall have in place adequate screening and vetting processes with respect to the use of the Subcontractors.
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	Documents, files, Original Works and Translated Works (“Files”) shall be handled between the Customer and Capita via Secure FTP, email, mail to translate, the web portal or API Connector
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	All Files distributed to linguists will be by the Multitrans web editor, Cryptshare or secure FTP
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	File receipt from Customer shall be via email, Mail to translate, the web portal or API connector
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	Files returned to Customer shall be via email, Mail to translate, the web portal or API connector
Global – (based on location of Service provision / Sub-contractors)	Sub-contractors	All Files distributed to linguists will be by the Multitrans web editor, Cryptshare or secure FTP

1.6 Chargeable assistance and change

CHARGEABLE ASSISTANCE

1.6.1 Subject to clause 1.6.2, and notwithstanding anything to the contrary in this Agreement, Customer acknowledges that the following tasks, activities and responsibilities are excluded from the Charges and shall be additionally chargeable by Capita on a time and materials basis:

- (a) Capita's obligations set out in clause 1.3.2;
- (b) save to the extent arising from a Personal Data Breach by Capita, Capita's obligations set out in clause 1.4.2; and
- (c) any request by Customer for assistance, information, reporting and/or other project activity relating to Customer's other obligations under the Data Protection Legislation including, without limitation, relating to accountability and transparency and data portability.

1.6.2 Capita shall not charge for:

- (a) the first 1 Working Day effort in any Contract Year in performing those activities set out in clause 1.6.1(a) to 1.6.1(c) (inclusive)

CHANGE AND SUPERVISORY AUTHORITY ACTION

1.6.3 Notwithstanding anything to the contrary in this Agreement, if Capita's efforts or costs in performing the Services (including the Processing Activities) increase as a result of:

- (a) any change to the Data Protection Legislation (including without limitation as a result of, or following, Brexit);
- (b) any new, clarified or amended guidance or other policy issued by a relevant Supervisory Authority;
- (c) any requirement following the GDPR Effective Date for Capita to enhance, supplement or modify the Processing Security Measures:
 - (i) at Customer's request,
 - (ii) in order to maintain compliance with clause 1.3.4; or
 - (iii) in order to maintain compliance with the Data Protection Legislation (including without limitation resulting from a change in Law or a change in the Security Considerations); and/or
- (d) (save to the extent arising from a breach by Capita of its obligations under this clause 1 (*Data Protection*) or under the Data Protection Legislation) any order, direction or instruction by a Supervisory Authority (whether relating to Customer or Capita) in respect of the Services (including the Processing Activities),

then such increased effort or costs shall be additionally chargeable and (where the same constitute a Change) shall be documented and agreed in accordance with the Change Control Process.

1.7 Indemnity and relief from liability

INDEMNITY

1.7.1 Subject to clause 1.7.2:

(a) each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages, fines, or expenses (including reasonable legal fees) incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 1 (*Data Protection*).

(b) Customer agrees to indemnify and keep indemnified and defend at its own expense Capita against all costs, claims, damages, fines or expenses (including reasonable legal fees) incurred by Capita or for which Capita may become liable due to Capita's compliance with any direction, instruction or requirement of Customer in relation to the Processing Activities or Customer Personal Data (including without limitation Capita's compliance with any technical and organisational security measures mandated by Customer).

1.7.2 Nothing in this clause shall restrict or limit either party's general obligation at law (and, in the case of Customer, pursuant to clause 1.4.3) to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity or otherwise.

RELIEF FROM LIABILITY

1.7.3 Capita shall be entitled to relief from liability for any failure to comply with its obligations under this Agreement (including any failure to perform the Services and Processing Activities) to the extent such failure results from:

- (a) a claim or complaint made by a Data Subject or a Supervisory Authority with regards to Capita's performance of the Processing Activities to the extent that such actions result from instructions received from Customer; and/or
- (b) (save to the extent arising from a breach by Capita of its obligations under this clause 1 (*Data Protection*) or under the Data Protection Legislation) any order, direction or instruction by a Supervisory Authority (whether relating to Customer or Capita) in respect of the Services (including the Processing Activities).

Annex 1

Description of the Processing of Personal Data

1. **Subject Matter**

Capita provides language services for all documentation and material translation as well as interpretation services requested by the Customer
2. **Nature**

Capita will automatically, manually process and store documentation for the purpose of language services.
3. **Purpose**

For the purpose of providing localised versions of the documentation and material received and interpreting services.
4. **Categories of Personal Data**

The categories of personal data that may be handled by Capita include but are not limited to customers and its affiliates: name; home address; job title; work contact details; information about their use of the Services; education/career information; national insurance number; work related data (e.g. pay, absences, holiday, performance and appraisal information, objectives, training); emergency contact information (including next of kin); birth certificates/ passports; personal contact details;
5. **Sensitive Personal Data**

The categories of sensitive personal data that may be handled by Capita include but are not limited to customers and its affiliates: Information about religion/ faith; ethnicity; sexual orientation; dietary requirements; health details
6. **Categories of Data Subjects**

Subjects include: employees, contractors, retail customers, sole traders, contacts at institutional customers
7. **Recipients of the Personal Data**

Third parties who will receive the Personal Data from Capita in connection with the Services, are freelance suppliers of language services contracted by Capita.
8. **Data Transfers**

Where the language service requires a supplier outside of the EEA and this falls within the agreements of the contract, the language service may require transfer of data to a non-EEA country.
9. **Retention**

Capita will hold soft copies of documentation for 12 months or in line with customer specific contracts where appropriate. The system will automatically destroy data and backup storage of data supplied by the customer after the 12-month period
10. **Supplier DPO**

Jenny Coombs

Annex 2

The Data Protection Standard Contractual Clauses

As per clause 1.5.1 of Schedule 2 (Data Protection) the Data Protection Standard Contractual Clauses which are included within the Subcontractor agreements and set out below:

The Data Protection Standard Contractual Clauses

Where Supplier Party is based outside of the European Economic Area this Attachment 3 and its annex shall apply.

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection Supplier Party, Capita and Capita's Client have agreed on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Annex 1 to this Attachment 3.

For the purposes of this attachment 3 the Supplier Party is the Data Importer and Capita's Client is the Data Exporter.

Capita is entering into these Data Protection Standard Contractual Clauses on behalf of the Capita Client who is the Data Exporter.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Annex 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Annex 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Annex 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Annex 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Annex 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the England and Wales.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the England and Wales
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

ANNEX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

Capita's Client is the Data Exporter who shall provide documents for translation and which Capita shall provide to the Data Importer for translation.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

The Data Importer is the Supplier Party who shall receive Original Works from Capita on behalf of the Data Exporter to create Output Works and to provide the Services under this Agreement.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

Data Subjects include: employees, contractors, retail customers, sole traders, contacts at institutional customers

Categories of data

The personal data transferred concern the following categories of data (please specify):

The categories of personal data that may be handled by Capita include but are not limited to customers and its affiliates: name; home address; job title; work contact details; information about their use of the Services; education/career information; national insurance number; work related data (e.g. pay, absences, holiday, performance and appraisal information, objectives, training); emergency contact information (including next of kin); birth certificates/ passports; personal contact details.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

The categories of sensitive personal data that may be handled by Capita include but are not limited to customers and its affiliates: Information about religion/ faith; ethnicity; sexual orientation; dietary requirements; health details.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

Capita will automatically, manually process and store documentation for the purpose of language services

Liability

The parties agree that if one party is held liable for a violation of the clauses committed by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

Indemnification is contingent upon:

- (a) the data exporter promptly notifying the data importer of a claim; and
- (b) the data importer being given the possibility to cooperate with the data exporter in the defence and settlement of the claim.

ANNEX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Annex forms part of the Clauses and must be completed and signed by the parties

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

CAPITA

The information security provisions set out in Schedule 2 (Data Protection) of the Agreement. As a minimum the pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate all the necessary safeguards into the Processing Activities in order to meet the requirements of the Data Protection Legislation and protect the rights of Data Subjects.