

THIS AGREEMENT is made on the [.....] day of [.....] 201[..].

BETWEEN:

- 1) **CAPITA BUSINESS SERVICES LIMITED** trading as **ORANGE BUS** a company incorporated in England and Wales (No. 02081330) whose registered office is at The Copyright Building, 30 Berners Street, London, W1T 3AB ("**Capita**"); and
- 2) **XYZ** a company incorporated in England and Wales [Registration No.....] whose registered office is at [.....] ("**the Customer**")

RECITALS:

- (A) Capita is a provider of IT Services.
- (B) The Customer wishes to appoint Capita as a provider of such Services and Capita accepts such appointment on the terms set out below.

PROVISIONS:

1 Definitions

- 1.1 As used in this Agreement the following terms and expressions have the meanings set out below:

"Agreement" means this agreement comprising the clauses and schedules hereto;

"Charges" means the charges set out in Schedule 2 (Charges and Payment Terms);

"Commencement Date" means the date first set out above;

"Data Protection Legislation" means, until 25 May 2018, the Data Protection Act 1998, and thereafter Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR);

"Force Majeure" means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof), fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available;

"Information Asset Register" means the record of processing activities in relation to this Agreement that is required to be maintained by the Data Processor under Article 32.2 of the GDPR from 25 May 2018;

"Intellectual Property Rights" means all rights in patents, trade marks, service marks, design rights (whether registered or unregistered and including semi-conductor topographies), copyright (including rights in computer software), database rights, sui generis rights, confidential information, trade secrets, trade or business names, domain names and other similar rights or obligations whether registerable or not in any country and applications for any of the foregoing;

“**Services**” means the Services set out in Schedule 1 (Services);

“**Works**” means any output, result or product of the Services in any form of media delivered by Capita as part of the Services.

2 Agreement

- 2.1 In consideration of the payment of the Charges, Capita will supply the Services to the Customer.
- 2.2 Capita will supply the Services with reasonable care and skill and in accordance with all applicable laws and regulations.

3 Payment

- 3.1 Capita will invoice the Customer for the Charges as specified in Schedule 2 (Charges and Payment Terms) of this Agreement, together with any applicable VAT and/or other local taxes as applicable, in accordance with this Clause 3 and the provisions of Schedule 2 (Charges and Payment Terms).
- 3.2 The Customer will pay all invoices within 30 days of the date of the invoice. Capita reserves the right to charge the Customer interest on any overdue sums, accruing daily at the rate of 4% per annum above the base rate of Barclays Bank Plc.
- 3.3 The Parties acknowledge that the Charges for the Services outlined in this Agreement have been calculated taking into account the recoverability of input VAT wholly or partly attributable to the provision of such Services.
- 3.4 Where, as a result of any change of law, any new or amended VAT ruling, any new or altered practice or interpretation of HMRC or any court or tribunal decision (which events shall be referred to individually or collectively as a “Change of Law”), Capita suffers any restriction or reduction or benefits from any increase in the amount of input VAT wholly attributable to the provision of the Services in respect of which it is entitled to credit or repayment then the amount of the Charges for the Services payable by the Customer shall, with effect from the date of such Change of Law, be adjusted so as to ensure that Capita is put in the same financial position as if no such Change of Law had occurred.
- 3.5 Where as a result of any Change of VAT Law, the Charges for Services already supplied are deemed, to have borne an amount in respect of VAT which was not VAT properly due thereon (**Overpaid VAT**), and the Customer requests in writing that Capita seeks a refund from HMRC in respect of such Overpaid VAT then, subject to Clause 3.6 below: (i) Capita shall take such action as may be necessary to claim a refund of the Overpaid VAT to the fullest amount permitted under UK legislation; and (ii) Capita shall remit to the Customer a sum equal to the amount actually received from HMRC in respect of such claim, less any costs and expenses incurred in or as a consequence of making such claim less an amount equal to any restriction or reduction (as a result of the Change in VAT Law) in the amount of input VAT wholly or partly attributable to the provision of the Services already supplied in respect of which it is entitled to credit or repayment.

- 3.6 Capita shall not be required to take any action referred to in Clause 3.5 which involves engaging in any litigation or dispute with HMRC or any other tax authority or any third party, and shall not be obliged to take or omit to take any action which it believes is or could be contrary to the interests of its business.
- 3.7 For the avoidance of doubt, save in accordance with Clause 3.5, Capita shall have no liability to pay any amount to the Customer in respect of any Overpaid VAT.

4 Intellectual Property Rights

- 4.1 Capita shall retain ownership of any Intellectual Property Rights created or generated by it in connection with the creation of the Works.
- 4.2 In consideration for the payment of the Charges, and without prejudice to Capita's ownership of Intellectual Property Rights (and in the absence of contrary licence terms notified by Capita to the Customer in writing) Capita will grant the Customer a non-exclusive, non-transferable, perpetual licence to use and reproduce the Works only for the Customer's internal business purposes. The Customer shall have no right to use the Works other than for its own internal own business purposes and in particular shall not sell or otherwise disclose any of the Works, or the Intellectual Property Rights contained in them, to any third party.

5 Protection of Personal Data

Within this Agreement Clause 5 the terms “controller”, “data subject”, “personal data”, “process” and “processor” shall have the same meanings as in the Data Protection Legislation.

- 5.1 Both parties confirm that they will fulfil the obligations assigned to them under the Data Protection Legislation when processing personal data belonging to the Customer, and shall give each other such assistance as is reasonable to enable each other to comply with such obligations taking into account the nature of the processing and the information available to the parties. Under the terms of the Data Protection Legislation the Customer shall be the Data Controller and Capita shall be the Data Processor
- 5.2 Capita agrees that it shall:
 - 5.2.1 only process the personal data in accordance with the Customer’s documented instructions;
 - 5.2.2 implement appropriate technical and organisational measures against unlawful or unauthorised processing and/or against accidental loss or destruction of or damage to such personal data;
 - 5.2.3 ensure Capita staff who have access to the personal data are subject to appropriate confidentiality obligations;
 - 5.2.4 not process or transfer personal data outside the EEA or engage a third party to process personal data without the prior written consent of the Customer; and
 - 5.2.5 save as required by law, at the choice of the Customer delete or return the personal data on expiry or termination of this Agreement.
- 5.3 Capita will ensure that, from 25 May 2018, the subject matter, duration, nature and purpose of the processing activities, the type of personal data processed, the categories of data subjects and the obligations and rights of the Data Controller in relation to this Agreement are set out in the Information Asset Register.
- 5.4 The Customer warrants, represents and undertakes to Capita that it’s instructions in relation to processing the personal data in accordance with the provisions of this Agreement are lawful.
- 5.5 Capita shall be entitled to (i) engage a subcontractor to perform any of the data processing activities, and/or (ii) transfer the personal data to a third country, provided that any such engagement or transfer is carried out in compliance with the Data Protection Legislation.
- 5.6 The Customer shall indemnify Capita against any liability arising as a result of either (i) a breach of the Data Protection Legislation by the Customer, or (ii) Capita following the Customer’s instructions, policies or procedures in relation to the data processing undertaken

6 Confidentiality

- 6.1 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 and 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”).
- 6.2 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 and 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.
- 6.3 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, agents or sub contractors 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.
- 6.4 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.
- 6.7 The provisions of this Clause 6 are of indefinite duration and shall not apply to any Confidential Information:
- 6.7.1 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; or
 - 6.7.2 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
 - 6.7.3 has been independently developed by the Receiving Party without access to the Confidential Information; or
 - 6.7.4 which is required to be disclosed by law.

7 Customer Obligations

- 7.1 The Customer undertakes to:
- 7.1.1 make available free of charge, access to its premises and facilities (subject

to reasonable safety and security requirements), and provide such suitable accommodation for Capita employees on its premises, as may be required by Capita to enable the supply of the Services;

- 7.1.2 ensure that its employees and other independent contractors co-operate reasonably with Capita and its employees in supplying the Services; and
- 7.1.3 promptly furnish Capita with all information and documents, and such suitable employees or other contractors of sufficient skill and experience as reasonably required by Capita for the supply of the Services;

8 **Publicity**

- 8.1 Neither party shall make any press announcement or publicise this Agreement without the prior written consent of the other party save that Capita shall be entitled to refer to the Customer in its general marketing, publicity and case study materials.

9 **Personnel**

- 9.1 Capita will use reasonable endeavours to make available any specific personnel named in Schedule 1 (Services), but reserves the right (in its sole discretion) to replace named personnel with alternative personnel of similar skill and experience.
- 9.2 The Customer may request upon 30 days notice in writing (giving specific reasons for the request) that Capita replace any personnel supplying the Services. Capita will consider in good faith such requests and will decide (in its sole discretion) whether or not to replace the personnel and reserves the right to charge the Customer for losses and expenses incurred in doing so.
- 9.3 Both parties agree not to solicit or entice away or engage any personnel of the other party or offer or cause to be offered any employment to any such personnel (other than by way of general advertisement) both during the term and for a minimum period of twelve months following the expiry or termination of this Agreement. If either party breaches this restriction, the party in default will pay as compensation to the other a sum equivalent to the annual salary paid to the relevant personnel by the non-breaching party.

10 **Sub-contractors**

- 10.1 Capita reserves the right to sub-contract all or any part of the supply of the Services.

11 **Change Request**

- 11.1 If either party identifies a requirement for a change to the Services, the identifying party will send a written notice ("**Change Request**") to the other party detailing the change requirements. If sent by Capita, the Change Request will state the effect such a change will have on the Services and the Charges. If sent by the Customer, the receipt of the Change Request by Capita will represent a request to Capita to state in writing the effect the change will have on the Services and the Charges. Capita will use reasonable endeavours to supply the necessary details within 15 working days from receipt of a Change Request from the Customer.

- 11.2 Where a change to the Charges is required the basis for calculating the additional Charges will be Capita's then prevailing fee rates (which are available upon written request to Capita). Capita will then decide whether or not to implement the Change Request. If the Change Request is implemented the amended services and charges will be deemed to be the Services and Charges and shall take effect for the remaining term of this Agreement.

12 Limitation of Liability

- 12.1 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 Works or the Services 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.
- 12.2 Notwithstanding anything else in this Agreement, the liability of Capita to the Customer under or in connection with this Agreement flowing from one event or a series of connected events, whether arising under contract or by way of indemnity, negligence or otherwise, shall, subject to Clause 12.3 & 12.4 below, be limited to an aggregate liability of 100% of the Charges paid or payable in the calendar year in which the event giving rise to the breach of this Agreement occurred.
- 12.2 The limitation of liability set out in Clause 12.2 above does not apply to:
- 12.2.1 either party's liability arising from death or injury to persons; or
 - 12.2.2 either parties liability arising as a result of fraud
- to which no limit applies.
- 12.3 Neither party shall be liable to the other for any loss of profits, business, revenue, business opportunities, goodwill or anticipated savings and/or indirect or consequential loss or damage even if that loss or damage was reasonably foreseeable or that party was aware of the possibility of that loss or damage arising.
- 12.4 Capita shall in no circumstances be liable for loss or damage caused by any default, act or omission on the part of Customer and Customer agrees to indemnify and keep Capita harmless 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.

13 Force Majeure

- 13.1 Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 13.2 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.

14 Termination

14.1 Either party may terminate this Agreement by giving the other 30 days written notice if:

14.1.1 the other party commits any material breach of this Agreement and fails to remedy such breach within 30 days or written notice notifying the breach and requiring its remedy;

14.1.2 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 bona 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

14.1.3 an event of Force Majeure which prevents the supply of the Services persists for 3 months or more.

14.2 Capita may terminate this Agreement with immediate effect upon written notice if (in its discretion) Capita determines that a serious conflict of interests exists or may develop between Capita and the Customer.

14.3 Termination of this Agreement will be without prejudice to any accrued rights and remedies available to either party and, for the avoidance of doubt, 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.

15 General

15.1 This Agreement and any Schedules shall together represent the entire understanding and constitute the whole agreement between the parties in relation to its subject matter and the parties agree that there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement except as specifically set forth herein and none of the parties has relied or is relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

15.2 No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of this Agreement shall be considered as a waiver of a preceding or subsequent breach.

15.3 If a court or administrative organisation with competent jurisdiction decides that a clause in this Agreement is not valid this will not affect the rest of this Agreement. The parties shall endeavour to agree on a suitable clause to replace the one which is not valid. The new clause should, as far as possible, achieve the same economic, legal and commercial aims of the invalid one.

- 15.4 Nothing in the Agreement shall be construed as creating a partnership or joint venture or a relationship of principal and agent between the parties.
- 15.5 Nothing in this Agreement is intended to confer any right or benefit on any third party or any right to enforce a provision contained in this Agreement and the Contracts (Rights of Third Parties) Act 1999 is hereby expressly excluded.
- 15.6 In the course of performing this Agreement Capita shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in relation to race, gender, disability, religion or otherwise) in employment.
- 15.7 Any land or premises (including temporary buildings) made available to Capita by the Customer in connection with this Agreement shall be made available to Capita free of charge and shall be used by Capita solely for the purpose of performing this Agreement. Capita shall have the use of such land or premises as licensee and shall vacate the same upon the termination or expiry of this Agreement.
- 15.8 To give notice under this Agreement, a letter must be delivered personally or sent by pre-paid first class post or facsimile transmission to the address or fax numbers set out below or to any other address or fax number given in writing. A notice delivered by hand is served when delivered, a notice sent by first class post is served 48 hours after posting and a notice served by fax is served when the fax is sent.

Capita Business Services Limited
71 Victoria Street

Westminster

London

SW1H 0XA

Fax No: 020 7976 0839

For the attention of: Commercial Director

the Customer

Address: []

Fax No: []

For the attention of:

- 15.9 Save as required by law, no publicity or advertising shall be released by either Party in connection with the subject matter of this Agreement without the prior written approval of the other which shall not be unreasonably withheld.
- 15.10 A variation of or amendment to this Agreement shall be valid only if it is in writing and signed by an authorised representative of each of the parties.
- 15.11 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.



IN WITNESS WHEREOF the parties hereto have signed by their duly authorised representatives on the date first above written:

Signed for and on behalf of **Capita**

By

Name

Title

Date

Signed for and on behalf of the **Customer**

By

Name

Title

Date

Schedule 1

The Services

PROPOSED SECTIONS

1. DESCRIPTION OF SERVICES
2. DELIVERABLES AND ACCEPTANCE
3. LOCATION
4. EXCLUSIONS
5. KEY STAFF
6. PROJECT CONTACTS
7. CUSTOMER RESPONSIBILITIES
8. ESTIMATED ENGAGEMENT TIMETABLE

Schedule 2

Charges and Payment Terms

[Detail how the Charges will be charged, when they will be invoiced, if they will be indexed (for longer contracts), and how expenses will be dealt with and charged]