

thebigword Terms and Conditions and thebigword GMS® Licence

A Whereas we have developed and own certain software known as **thebigword GMS®**, **thebigword TMS**, and **thebigword IMS** (collectively known as thebigword GMS®) and various connectors to third party software.

B Whereas we wish to licence thebigword GMS® to you and you wish to take a licence of thebigword GMS® from us on the terms and conditions set out in this thebigword GMS® Licence and Terms and Conditions.

C These Terms and Conditions apply to the relationship between you and us.

1. Definitions and Interpretation

1.1 In these Terms and Conditions:

Acceptable Use Policy sets forth an agreement between you and us which defines fair and acceptable use of the Services and which is incorporated into these Terms and Condition.

Business Day means any day which is a working day and not a public holiday in the time zone in which we work.

Business Hours means 9.00am to 5.30pm UTC (or British Summer Time (UTC+1)).

Confidential Information means information (in any form) which is confidential either to you or to us and which either you disclose to us or we disclose to you in connection with our Services.

Contract means a contract between us and you for the provision of Services, incorporating these Terms and Conditions

Customer, you or your means the company, firm, body, person or legal entity to whom we are supplying the Services.

Customer Data means all data, including all text, sound, or image files that you provide, or are provided on your behalf, to us through your use of the Services which is input into the information fields of the software comprising the thebigword GMS® by your Authorised Users, or by us on your behalf.

Customer Resources means Customer specific material, such as translation memories, accessible by the Customer if it subscribes for Upgraded Services via thebigword GMS™ Portal.

Effective Date means the date you accept these Terms and Conditions either by auto-acceptance or otherwise and in the case of the Upgraded Services, the anniversary of the date on which you pay for the upgraded Services.

Intellectual Property Rights means all current and future copyright, patents, trademarks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any country in the world.

Licence means the licence granted in clause 2.1 below.

Order means an order for the Services provided by you from time to time.

Original Works means the documents, files, materials and works provided by you for the purposes of carrying out the Services.

Privacy Policy is the policy setting out how we collect and store your data pursuant to your use of the Services.

Services means all language services available via the thebigword GMS® Portal and under these Terms and Conditions.

Subscription means those charges in respect of the provision of the relevant Upgraded Services for which you agree to pay.

Terms and Conditions means these Terms and Conditions.

thebigword GMS Software Licence means the licence governing your use of the 'thebigword GMS® platform.

thebigword GMS® means the software applications comprising thebigword Globalisation Management System®, which includes the thebigword TMS and thebigword IMS and any other system that we may develop from time to time. Reference to thebigword GMS® shall include the other available systems, unless otherwise specified

thebigword GMS® Portal means the portal located at the Website which provides access to the thebigword GMS®

thebigword TMS means thebigword Translation Management System.

thebigword IMS or IMS Direct means thebigword Interpreting Management System.

Translated Works means the documents, files, materials and works translated and produced from the Original Works in accordance with your instructions and provided to you by us.

Upgraded Services means additional features and functionalities for which a Subscription is paid.

We, us, our mean Link Up Mitaka Limited (company number 1789968) trading as thebigword in relation to translation services, thebigword Interpreting Services Limited (company number 06232449) in relation to interpreting services and Gould Tech Solutions Limited (company number 1926324) in relation to the Licence, all of whose registered offices are at Link Up House, Ring Road, Lower Wortley, Leeds, LS12 6AB UK, and thebigword Inc. of 250 West 57th Street, Suite 420, New York, NY-10019 a Delaware Corporation. All are wholly owned subsidiaries of thebigword Group Ltd.

Website means the website located at www.thebigword.com and any other domains or sub domains under our control or ownership which you are redirected to as part of your use of the Services.

Website Terms of Use means our terms and conditions for the use of the Website including certain policies.

Year means a 12 month period commencing on the Effective Date and every 12 month period thereafter.

You, your means the company, firm, body or person to whom we are supplying the Services.

1.2 Clause, schedule and paragraph headings are for ease of reference only and shall not affect the interpretation of these Terms and Conditions.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 References to the singular shall include the plural (and vice versa) and words denoting persons or a party include individuals, bodies corporate, partnerships, unincorporated associations and other bodies.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 References to 'documents', 'records', 'books' and 'data' shall include information contained in computer programs and disks and records or other machine readable form or records kept otherwise than in a legible form but capable of being produced in a legible form.

1.7 The word 'including' shall be understood to mean 'including without limitation' and the word 'includes' shall be understood to mean 'includes without limitation'.

1.8 Words of a technical nature shall be construed in accordance with general trade usage in the computer industry in England.

2. General

2.1 Any Contract shall be subject to these Terms and Conditions to the exclusion of all others (including any terms which you purport to apply under any Order, specification or other document). No terms endorsed on, delivered with or contained in your Order, specification or other document shall form part of the Contract simply as a result of being referred to in the Contract. These Terms and Conditions apply to all of our sales or provision of Services and any variation thereto shall have no effect unless expressly agreed in writing by us. You acknowledge that you have not relied upon any statement, promise or representation given by us other than is set out in the Contract. Nothing in this condition excludes or limits our liability for fraudulent misrepresentation.

2.2 Each Order or acceptance of quotation for Services by you (either orally or in writing or generated by our systems) shall be deemed: (i) to be an offer by you to purchase the Services subject to these Terms and Conditions to the exclusion of any other terms; and (ii) in the absence of manifest evidence to the contrary, to be given by an authorised representative of you. No Order placed by you shall be deemed accepted by us until a written or systemised acknowledgement of order is issued by us. Any quotation is given on the basis that no Contract shall come into existence until we dispatch an acknowledgement of order to you. This must be supported by a mutually agreed credit limit

2.3 Our written quotations are given on the basis that the terms quoted will remain open for the placing of orders for 30 days from the date of the quotation.

2.4 Quotations are given on the basis of your description of the source material, the purpose of the translation and any other instructions. Such quotations may be amended at any time if, in our opinion, the description of the source materials is materially inadequate or inaccurate.

2.5 Information provided in our brochures, catalogues or other published material is general description only and does not form part of the Contract.

2.6 These Terms and Conditions apply to all Services provided to you unless otherwise agreed between the parties in writing.

2.7 In the event of a conflict between these Terms and Conditions and the terms of a Statement of Work ("SOW") or Purchase Order ("PO") then these Terms and Conditions shall prevail, unless it is expressly stated in the SOW or PO that it sets aside certain provisions of these Terms and Conditions and the SOW or PO is signed by both parties. In such a case, the replacement provisions shall only apply to that specific SOW or PO.

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 us, time is not of the essence for delivery or performance and no delay shall entitle you to reject any delivery or performance or to repudiate the Contract.

3.2 We will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is not substantial or if the delay or failure is due to late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, shortage of labour, an act of God, fire, inclement or exceptional weather conditions, industrial action, hostilities, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond our control or of an unexpected or exceptional nature.

3.3 Posting or delivery to a carrier (including post, facsimile, e-mail) for the purpose of transmission to you shall, for the purposes of the Contract, constitute delivery to you. Risk in the Translated Works shall pass to you on delivery.

4. Licence

4.1 Subject to these Terms and Conditions (and where we provide you with Upgraded Services, in consideration of your payment of the Subscription), we hereby grant you a non-exclusive, non-transferable, revocable, licence to access to thebigword GMS® solely for your business purposes. You shall prevent multiple users of the Licence from your organisation and anyone other than you to use the same login/password.

4.2 The Subscription shall be reviewed annually on each anniversary of the Effective Date during the Term and varied by mutual consent. If the review of Subscription is inconclusive we have the right to suspend the Licence and the Services. Payment of the Subscription shall be made by you on the anniversary of the Effective Date in each year of the Term.

4.3 You shall comply at all times with our [Acceptable Use Policy](#) and you warrant that you have read, agreed and understood the content.

4.4 The rights provided under these Terms and Conditions are granted to you only, and shall not be considered granted to any of your company's subsidiary or holding companies.

4.5 We value your privacy, please read our [Privacy Policy](#) about how we collect and store your personal data.

4.6 YOU SHALL NOT:

- attempt to duplicate, modify or distribute thebigword GMS® or any part thereof;
- attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of thebigword GMS®, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
- use thebigword GMS® to provide services to third parties except as otherwise agreed in advance and in writing between the parties;
- transfer, temporarily or permanently, any of our rights under these Terms and Conditions, or
- attempt to obtain, or assist others in obtaining, access to thebigword GMS® save as is provided in these Terms and Conditions.

thebigword Terms and Conditions and thebigword GMS® Licence

5. Software Services

- 5.1 We shall provide you with a unique password, created by us in the first instance and accessible for amendment by you, to enable you to have access to thebigword GMS®. You must have a valid email address to facilitate management of your user account and password.
- 5.2 Access to thebigword GMS® shall be limited to the functionality selected and purchased (if applicable) by you.
- 5.4 You are entirely responsible for ensuring that you keep a secure password for use of thebigword GMS® and that you keep your password confidential.
- 5.5 We may carry out an audit regarding the use of the Licence. Such audit may be conducted no more than once per quarter, at our expense, and shall be exercised with reasonable prior notice, in a manner so as not to substantially interfere with your normal conduct of business. If such audit reveals that the Licence is being used by more than an individual, without prejudice to our other rights, we reserve the right to disable your password and/or suspend and/or terminate the Services.
- 5.6 Routine maintenance of thebigword GMS® shall be performed where possible from 2200 – 0000, 0600 – 0800 and weekends (all UK times) unless we give reasonable notice. In any event we may interrupt thebigword GMS® to perform emergency maintenance during Business Hours.
- 5.7 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in thebigword GMS®. Support for additional features developed by us, as requested by you, may be purchased separately at our then current rates.
- 5.8 Should you consider that thebigword GMS® includes a defect, you may at any time file error reports. During maintenance periods, we may, at our discretion, upgrade versions, install error corrections and apply patches to thebigword GMS®.
- 5.9 We shall maintain technical support on the two most current releases of thebigword GMS™. Our 24 hour technical support help desk can be accessed through <https://support.thebigword.com/>. We shall use reasonable endeavours to process support requests, issue incident ticket tracking numbers if necessary, determine the source of the problem and respond to you. Our technical support call centre shall respond to all support requests within reasonable time periods, according to priority.
- 5.10 We reserve the right to add to, delete from, vary or modify the Services but we will notify you of such change as soon as practically possible thereafter.

6. Our Obligations

- 6.1 We undertake that the maintenance and support services (as described above) will be performed with all reasonable skill and care. Time is not of the essence.
- 6.2 We will, at our expense, use all reasonable commercial efforts to correct any non-conformance promptly, or provide you with an alternative means of accomplishing its desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the undertakings set out in this clause. Notwithstanding the foregoing, we do not warrant that your use of thebigword GMS® will be uninterrupted or error-free.
- 6.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms and Conditions.
- 6.4 These Terms and Conditions shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under these Terms and Conditions.
- 6.5 The Services shall be carried out using reasonable skill and care in accordance with the standards of the industry.
- 6.6 We shall use all reasonable skill and care in selecting translators, interpreters and other personnel used to produce the Translated Works and perform the Services.
- 6.7 No terms, conditions or warranties, whether express or implied, about the quality or fitness for purpose of the Services or the Translated Works shall be incorporated unless expressly set out in this Contract.
- 6.8 We shall incur no liability to you for innocent or negligent misrepresentation by virtue of any statement made by or on behalf of us prior to the Contract, whether orally or in writing, and you shall not be entitled to rescind the Contract on the grounds of any such misrepresentation.
- 6.9 We do not warrant that the Translated Works or the Services will meet your specific requirements and, unless otherwise agreed in writing, we do not warrant that the operation of any Translated Works sent to you or Services performed by us will be uninterrupted or error free. Furthermore, we do not warrant or make any representation regarding the use of the Translated Works or the Services provided in terms of their accuracy, correctness, and reliability or otherwise.
- 6.10 You acknowledge that any Original Works and Translated Works submitted by and to you over the Internet or via the 'thebigword GMS® platform cannot be guaranteed to be free from the risk of interception or corruption even if transmitted in encrypted form and that we have no liability for the loss, corruption or interception of any Original Works or Translated Works.
- 6.11 Where
 - 6.11.1 you require us to provide Services to you with expedition and/or
 - 6.11.2 we propose that you utilise a number of our Services for the fulfilment of your requirements and you do not accept all of them then there may be a risk that the quality of the Services are not of the high standard that we provide in the normal course of our business. In either circumstance we disclaim any responsibility for the Translated Works and you accept that:
 - a) the Services may not be carried out by us using the same level of skill and care as we would use in providing the Services in the normal course of our business;
 - b) there may be errors or omissions in the performance of the Services which shall not entitle you either to cancel the Contract or decline to make any payment to us in respect of the provision of the Services; and
 - c) you indemnify us in relation to any claim made or loss suffered as a consequence of any such error or omission.

7. Your Obligations

- 7.1 You shall provide us with all necessary co-operation in relation to these Terms and Conditions and all necessary access to such information as may be required from time to time in order for us to provide the Services.
- 7.2 You shall provide such personnel assistance as may be reasonably requested by us from time to time.
- 7.3 You shall comply with all applicable laws and regulations with respect to our activities under these Terms and Conditions.
- 7.4 You shall carry out all your responsibilities set out in these Terms and Conditions in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any timetable or delivery schedule set out in these Terms and Conditions as reasonably necessary.
- 7.5 You warrant, represent and undertake that the materials submitted by you shall not contain anything of an obscene, blasphemous or libellous nature and shall not (directly or indirectly) infringe the Intellectual Property Rights of any third parties.
- 7.6 Unless otherwise agreed by us, you (which for the purposes of this clause includes any of your associated companies, their or your employees, directors, principals or shareholders) shall not, for a period of five years after termination of the Contract, either directly or indirectly, on your own account or for any other person, firm or company, solicit, employ, endeavour to entice away from us or use the services of a translator or interpreter who has provided the Services and/or Translated Works to you on our behalf under the Contract ("Linguist"). In the event of your breach under this clause, you agree to pay us an amount equal to the aggregate remuneration paid by us to the Linguist for the year immediately prior to the date on which you employed or used the services of the Linguist.
- 7.7 You agree, upon demand, to indemnify us (which for the purposes of this clause includes our employees, agents and sub-contractors), and keep us indemnified, from all losses, damages, injury, costs and expenses of whatever nature suffered by us to the extent that the same are caused by or related to:
 - 7.7.1 The use or possession by us of any of the Original Works or materials provided by you in relation to the provision of the Services, including the breach of any Intellectual Property Rights of any third party in or to any such Original Works or materials.
 - 7.7.2 Any breach of warranty given by you in this clause 6.
 - 7.7.3 Any other breach by you of these Terms and Conditions.
- 7.8 In the event you require us to provide the Services on your premises you shall:
 - 7.8.1 Assign members of staff with suitable skill and experience to be responsible for our activities.
 - 7.8.2 Provide such access to premises, interpretation systems and other facilities which may be reasonably required by us.
 - 7.8.3 Provide such information as may be required by us to carry out the Services and ensure all such information is correct and accurate.
 - 7.8.4 Ensure that all necessary safety and security precautions are in place at your premises.
- 7.9 We shall be entitled to charge you for any additional costs and expenses which we may incur as a result of any hazardous conditions or material encountered at your premises.
- 7.10 We shall not be obliged to continue to perform the Services where we consider, at our sole discretion, this would constitute a breach of warranty given by you in this clause 7, an illegal act or a safety hazard.

8. Charges and Payment

- 8.1 All Subscriptions referred to in these Terms and Conditions are exclusive of value added tax and all other taxes charges and duties which shall be added to our invoice(s) at the appropriate rate.
- 8.2 The Subscription is immediately due and payable online through a third party payment provider. If this is not convenient to you then an invoice for an annual Subscription will be sent to you for immediate settlement. The required access to the Upgraded Services will only be available once payment is received.
- 8.3 Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.
- 8.4 Payment shall be received within 30 days from the date of invoice. All payments shall be made without deduction or set-off. All and any queries relating to the invoice and/or the Services for any billing period shall be raised within 10 business days of receipt of such invoice by you. In circumstances where no queries are raised within the said 10 days period the invoice shall be deemed accepted.
- 8.5 Where the Services are being provided in stages and/or over a period of more than 60 days, we can invoice you upon completion of each stage of the work or at monthly intervals.
- 8.6 We reserve the right, even after you have accepted our quotation not to work on your order if we consider (using our absolute discretion) that your creditworthiness is not satisfactory.
- 8.7 If by mistake, we have under-priced a translation or interpreting assignment we will not be liable to supply the translation or undertake the interpreting assignment to you at the stated price, provided that we notify you before we dispatch the translations to you or start the interpreting assignment. In those circumstances, we will notify the correct price to you so you can decide whether or not you wish to order the translation or the interpreting assignment at that price.

9. Proprietary Rights

- 9.1 We confirm that we have all the rights in relation to thebigword GMS® that are necessary to grant all the rights we purport to grant under, and in accordance with, the terms of these Terms and Conditions.

thebigword Terms and Conditions and thebigword GMS® Licence

- 9.2 You acknowledge and agree that we and/or our licensors own all intellectual property rights in the Services and the thebigword GMS®. Except as expressly stated herein, these Terms and Conditions does not grant you any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the thebigword GMS®.
- 9.3 The Customer Resources and Customer Data shall remain at all times your property.
- 9.4 You grant us a licence to use both the Customer Data and Customer Resources to the extent necessary for us to comply with our obligations under these Terms and Conditions and you shall indemnify, defend and hold us harmless from any and all losses, liabilities, damages, costs and expenses arising from and in connection with any claim relating to our use of the Customer Data and Customer Resources including (without limitation) any claim that the Customer Data and/or the Customer Resources (or any part thereof) infringes a third party's Intellectual Property Rights.
- 9.5 Each party may be given access to confidential information from the other party in order to perform its obligations under these Terms and Conditions. Both Clause 10 and our Privacy Policy cover treatment of confidential information.
- 9.6 We acknowledge that the Customer Data and Customer Resources are the confidential information of the Customer.
- 9.7 This clause 9 shall survive termination of these Terms and Conditions, however arising.
- 9.8 All Intellectual Property Rights (including but not limited to copyright) in the Original Works and the Translated Works shall vest in you (or your licensors) but, for the avoidance of doubt, you hereby grant to us (and our sub-contractors) a licence to store and use the Original Works and the Translated Works for the duration of the Contract and for the purposes of providing the Services to you.
- 9.9 You recognise that we will take advantage of techniques, concepts and know-how developed and learned by us in the course of performing the Services and various other projects ("Knowledge"). You agree that nothing in these Terms and Conditions shall preclude us from performing the same or similar Services for third parties and that we shall have the right to use or exploit the Knowledge.
- 10. Confidentiality**
- 10.1 Subject to clause 10.3 and (on our part) save as necessary in order for us to provide the Services, neither party may use any of the other party's Confidential Information.
- 10.2 Subject to clause 10.3, neither party may disclose to any other person any of the other party's Confidential Information.
- 10.3 Either party may disclose the Confidential Information of the other:
- 10.3.1 When required to do so by law or any regulatory authority, provided that the party required to disclose the Confidential Information, where practicable and legitimate to do so;
- 10.3.2 Promptly notifies the owner of any such requirement; and
- 10.3.3 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.
- 10.4 To its (or any of its associated company's) personnel, sub-contractors' personnel or any person whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person to whom such disclosure is made:
- 10.4.1 Is informed of the obligations of confidentiality under these Terms and Conditions; and
- 10.4.2 Complies with those obligations as if they were bound by them.
- 10.5 The obligation of confidentiality contained within this clause 10 shall survive termination of the Contract howsoever caused.
- 10.6 Each party agrees that its obligations in this clause 10 are necessary and reasonable in order to protect the party making the disclosure and each party agrees that the remedy of damages would be inadequate to compensate the party making the disclosure for any breach by the party receiving the disclosure of its obligations set out under this clause 10. Accordingly each party agrees that, in addition to any other remedies that may be available, the party making the disclosure shall be entitled to seek injunctive relief against the threatened breach of these Terms and Conditions or the continuation of any such breach by the party receiving the disclosure, without the necessity of proving actual damages.
- 11. Data Protection**
- 11.1 Where we process Personal Data pursuant to the provision of the Services, the Data Protection Schedule attached shall apply.
- 11.2 In the event of any inconsistency between the these Terms and Conditions and the Data Protection Schedule, the Data Protection Schedule shall prevail.
- 12. Indemnity**
- 12.1 We shall defend you, your officers, directors and employees against any claim that thebigword GMS® infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- (a) we are given prompt notice of any such claim;
- (b) you provide us with reasonable co-operation in the defence and/or settlement of such claim, at our expense; and
- (c) we are given sole authority to defend or settle the claim.
- 12.2 In the defence or settlement of the claim, we may obtain for you the right to continue using thebigword GMS®, replace or modify it so that it becomes non-infringing or, if such remedies are not reasonably available, terminate these Terms and Conditions without liability to you. We shall have no liability if the alleged infringement is based on:
- (a) a modification of thebigword GMS® by anyone other than us; or
- (b) your use of thebigword GMS® in a manner contrary to the instructions given to you by us; or
- (c) your use of thebigword GMS® after notice of the alleged or actual infringement from us or any appropriate authority.
- 12.3 The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.
- 13. Limitation of Liability**
- 13.1 This clause 13 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of any breach of these Terms and Conditions (including the indemnity set out at clause 12) use of thebigword GMS® and any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms and Conditions.
- 13.2 Nothing in these Terms and Conditions excludes our liability for either death or personal injury caused by our negligence, or for fraud or fraudulent misrepresentation.
- 13.3 We shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar loss or pure economic loss, or for any special, indirect or consequential losses, costs, damages, charges or expenses however arising.
- 13.4 You assume sole responsibility for results obtained from the use of thebigword GMS® and for any conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with thebigword GMS®, or any actions or omissions taken by us at your direction including in relation to any Customer Data input by us.
- 13.5 Our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms and Conditions shall be limited to the sums paid by you to us during the 12 months preceding the date on which the claim arose.
- 14. Dispute Resolution**
- 14.1 If any dispute arises between the parties with respect to the Services provided by us, then such dispute shall at the request of either party be referred to a person agreed between the parties or (in default of agreement within 7 days of notice from either party) to a person chosen on the application of either party by the Chairman for the time being of the Institute of Translation and Interpreting.
- 14.2 Such a person shall be appointed to act as an expert and not as an arbitrator and the decision of that person shall be final and binding.
- 14.3 The cost of such an expert shall be borne equally by the parties, unless such expert otherwise directs.
- 14.4 Nothing in this clause prevents a party from seeking urgent interim or interlocutory relief in a court or tribunal that has jurisdiction to grant that relief.
- 15. Suspension**
- 15.1 We reserve the right to suspend and/or terminate these Terms and Conditions, the Services and/or your access to thebigword GMS® if your account falls into arrears, if we suspect misuse of our Software or if required by law. The suspension of services will end upon payment by you of the invoice.
- 15.2 You agree and acknowledge that we have no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is in arrears for 30 days or more.
- 16. Term and Termination**
- 16.1 These Terms and Conditions and the Licence granted hereunder shall commence on the Effective Date and shall continue thereafter unless either party terminates it in writing to the other party giving at least three months' notice of termination. You will not be entitled to a refund of a Subscription if you terminate or downgrade part way through a Year, unless you pay your Subscription annually in which case you will receive the refund on the last day of the month following the expiry of the notice period and after deduction of a deactivation fee of 10% of the Subscription.
- 16.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms and Conditions and the Licence granted hereunder immediately and without liability to the other if:
- (a) the other party commits a material breach of any of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 30 Business Days of that party being notified in writing of the breach;
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 16.3 On termination of these Terms and Conditions and the Licence granted hereunder for any reason:
- (a) all licences including the Licence granted under these Terms and Conditions shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

thebigword Terms and Conditions and thebigword GMS® Licence

- (c) we may destroy or otherwise dispose of any Customer Data in our possession unless we receive, no later than ten days after the effective date of the termination or expiry of these Terms and Conditions and the Licence granted hereunder, a written request for the delivery to you of the then most recent back-up of Customer Data. We shall use reasonable commercial efforts to deliver the back-up to you within 30 days of our receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in returning or disposing of Customer Data; and
- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.
- 16.4 If you subsequently cancel, reduce in scope or frustrate (by an act or omission on your part or any third party relied upon by you) the Contract, the full price for the Contract shall remain payable unless otherwise agreed in writing in advance. Any Original Works provided to us and Translated Works completed by us under the Contract shall be made available to you on termination of the Contract.
- 17. Force Majeure**
We shall have no liability to you under these Terms and Conditions if we are prevented from or delayed in performing our obligations under these Terms and Conditions, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you are notified of such an event and its expected duration.
- 18. Export Terms**
- 18.1 You will be responsible for complying with any legislation or regulations governing the importation of the Translated Works and the re-importation of the original works into the country of destination and for the payment of any duties on them.
- 18.2 You shall not offer the Translated Works for resale in any restricted country (as specified by the DTI or other UK government agency from time to time and/or the Department of Commerce or other U.S government agency) or any country notified by us to you at or before the time your order is placed, or sell the Translated Works to any person if you knew or have reason to believe that person intends to resell the Translated Works in any such country
- 18.3 You will not export directly or indirectly any technical data acquired under these Terms and Conditions or any Translated Works produced utilising any such data to any country to which either or both of the U.S or UK Government or any of their agencies requires an export licence or other government approval, without first obtaining such licence
- 19. Anti -Corruption and Anti-Bribery**
- 19.1 You shall:
- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and corruption including but not limited to the Bribery Act 2010;
 - (b) not engage in any activity, practice or manner constituting an offence under sections 1,2 or 6 and 7 of the Bribery Act 2010;
 - (c) comply with all international anti- bribery conventions where you are operating (collectively, the "Anti-Bribery Laws");and
 - (d) have and shall maintain in place throughout the term of this contract your own policies procedures and requirements and will enforce them where appropriate.
- 19.2 You agree to promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of these Terms and Conditions and/or if a foreign public official becomes an officer or employee of yours or acquires a direct or indirect interest in you (and you warrant that you have no foreign public officials as officers, employees or direct or indirect owners at the date of these Terms and Conditions).
- 19.3 You shall ensure that any person associated with you who is performing services or providing goods in connection with these Terms and Conditions does so only on the basis of a written contract which imposes similar obligations equivalent to those imposed on you in this clause. You shall be responsible for the observance and performance by such persons of the Anti-Bribery Laws, and shall be directly liable to us for any breach by such persons of any of the Anti-Bribery Laws
- 19.4 For the purpose of this clause the meaning of adequate procedures and foreign public officials and whether a person is associated with another person shall be determined in accordance with section 7 (2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6 (5) and 6 (6) of that Act and section 8 of that Act respectively. For the purpose of this clause any breach of this clause shall be deemed a material breach.
- 20. Miscellaneous**
- 20.1 A waiver of any right under these Terms and Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 20.2 Unless specifically provided otherwise, rights arising under these Terms and Conditions are cumulative and do not exclude rights provided by law.
- 20.3 If any provision (or part of a provision) of these Terms and Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 20.4 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 20.5 These Terms and Conditions, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 20.6 Each of the parties acknowledges and agrees that in entering into these Terms and Conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Terms and Conditions or not) relating to the subject matter of these Terms and Conditions, other than as expressly set out in these Terms and Conditions.
- 20.7 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms and Conditions.
- 20.8 We may at any time, subject to compliance with clauses 2(f) and 2(g) of the Data Protection Schedule, assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these Terms and Conditions.
- Nothing in these Terms and Conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- These Terms and Conditions are made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else. We may engage any person, firm or company as our sub-contractor to perform any or all of our obligations and we may assign any or all of our rights and obligations under the Contract.
- 20.9 Any notice required to be given under these Terms and Conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Terms and Conditions, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in these Terms and Conditions. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 20.10 These Terms and Conditions and any disputes arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.
- 20.11 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions.

DATA PROTECTION SCHEDULE

1. Within this Schedule "**Process/Processing**", "**Data Subject**", "**Personal Data Breach**" and "**Special Categories of Personal Data**" shall have the same meaning as in the Data Protection Laws. "**Data Protection Laws**" means all applicable laws which govern the use of data relating to identified or identifiable individuals, including the Data Protection Act 1998 ("**DPA**"), the Privacy and Electronic Communications Regulations 2003 and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (the "**GDPR**"), as amended or replaced from time to time and to the extent applicable to a party. "**Personal Data**" means any personal data (as defined in the Data Protection Laws) which is Processed from time to time by us in connection with the provision of the Services. "**Data Controller**" means a 'data controller' for the purposes of the DPA and a 'controller' for the purposes of the GDPR (as such legislation is applicable). "**Data Processor**" means a 'data processor' for the purposes of the DPA and a 'processor' for the purposes of the GDPR (as such legislation is applicable). "**Standard Contractual Clauses**" means the Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council. "**Approved Sub-Contractors**" means the sub-contractors which we may use to assist us to provide the Services from time to time, which can be found at the end of this data protection schedule.

2. Where Personal Data is Processed by us pursuant to the provision of our Services, the parties acknowledge that we will Process Personal Data on behalf of you in the capacity of a Data Processor. Further details of our Processing of Personal Data, including the types of Personal Data, the purposes and duration of the Processing and the categories of Data Subjects are provided in Annex 1 to this Schedule. When Processing the Personal Data as your Data Processor, we shall:
 - a. only Process the Personal Data in accordance with your lawful, documented and reasonable instructions (and you hereby instruct us to Process Personal Data to the extent necessary to provide the Services), unless otherwise required to comply with any EU or Member State law to which we are subject, in which case we shall (to the extent permitted by law) inform you of that legal requirement before Processing that Personal Data;
 - b. upon becoming aware of a Personal Data Breach:
 - i. notify you without undue delay; and
 - ii. reasonably co-operate with you and take such reasonable commercial steps as are requested in writing by you to assist you in the investigation, mitigation and remediation of that Personal Data Breach, provided in each case that you shall reimburse us for all costs (including for internal resources and any third party costs) reasonably incurred by us in providing such assistance under this clause 2(b)(ii) within 14 days of the date of our invoice, to the extent the Personal Data Breach was not caused by us;
 - c. provide commercially reasonable assistance to you upon your written request to assist you to deal with (i) requests from Data Subjects to exercise their rights under Data Protection Laws and/or (ii) with any assessment, enquiry, notice or investigation by any Supervisory Authority under Data Protection Laws, which relate to the Personal Data. You shall reimburse us in full for all costs (including for internal resources and any third party costs) reasonably incurred by us in providing such assistance under this clause 2(c) within 14 days of receipt of an invoice from us;
 - d. implement such technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data;
 - e. ensure that our employees who may have access to the Personal Data are subject to confidentiality undertakings;
 - f. only appoint sub-processors who will have access to the Personal Data, where the sub-processor has entered into a written contract with us which imposes obligations on the sub-processor which are required to be imposed by Article 28 of the GDPR (or other equivalent obligation under Data Protection Laws). You hereby consent to the processing of your Personal Data by (i) our approved linguists (as amended from time to time) and (ii) our Approved Sub-Contractors. In the event that we intend to allow access to your Personal Data by any sub-processor other than our approved linguists and Approved Sub-Contractors we shall inform you in writing. You may object to such changes in writing within 10 days of receiving notice, but if you do not object within that time period, you will be deemed to consent to the change notified. If you object to any changes to our use of sub-processors then we may, at our absolute discretion, terminate the Contract by giving 30 days' prior written notice to you;
 - g. not transfer any Personal Data from the European Union to, or access or allow access to such data from, outside the European Economic Area ("**EEA**") unless (i) the transfer is to, or the access is from, a country which the European Commission has decided pursuant to Article 25(2) of the Data Protection Directive 95/46/EC (or any equivalent provision under Data Protection Laws) ensures an adequate level of protection for the processing of Personal Data (a "**Safe Country**"); or (ii) where that is not the case, measures are in place to ensure that the transfer/access will not put you in breach of the rules contained in the Data Protection Laws which govern the transfer of Personal Data from the European Union to recipients located outside the EEA. We have entered into Standard Contractual Clauses on behalf of you with our approved linguists, which apply whenever a linguist processes Personal Data from the European Union, in a location outside the EEA which is not a Safe Country, a copy of which can be obtained on request from us;
 - h. provide commercially reasonable assistance at your cost to enable you to comply with your obligations under Articles 32 – 36 (Security, Breach Notifications, Data Protection Impact Assessments, Prior Consultation) of the GDPR;
 - i. unless you request otherwise in writing, you agree that we will retain the Original Works, Translated Works and other materials which may contain Personal Data for 13 months from the completion of a Work Request for your convenience, to enable you to raise any queries relating to the Services or the Work Request. You warrant that the retention of the Personal Data by us following completion of a Work Request shall not put us in breach of Data Protection Laws. At the end of the 13 month period following completion of a Work Request or, if earlier, upon expiration or termination of this Agreement, we shall return (or shall delete if requested to do so by you in writing prior to the end of the 13 month period or within 14 days of the termination or expiration of this Agreement) all Personal Data (and shall delete any copies of it) in our possession or control to you unless we are required to retain the Personal Data in order to comply with applicable laws; and
 - j. make available to you any information reasonably requested in writing by you and (as applicable) co-operate in the conduct of any audit or review exercise, as you may reasonably require to assess our compliance with the obligations set out in this clause 2, provided always that:

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- i. this requirement shall not oblige us to provide or permit access to information concerning (i) our internal pricing information; (ii) information relating to our other customers; (iii) any of our non-public external reports; or (iv) any internal reports prepared by our internal audit function;
 - ii. a maximum of one audit or review may be activated under this clause 2(j) in any twelve (12) month period; and
 - iii. you shall keep all information provided or obtained by you in accordance with this clause 2(j)(iii) confidential; and
 - iv. you comply with your obligations under Data Protection Laws.

3. You warrant that:
 - a. you will comply with your obligations under Data Protection Laws;
 - b. all of the Personal Data provided by you (or on your behalf) to us, will be collected and provided in accordance with Data Protection Laws; and
 - c. our Processing of such Personal Data in accordance with this Agreement will not put us in breach of Data Protection Laws.

4. If at any time, in our reasonable opinion, we needs to amend this Schedule in order to comply with our obligations under Data Protection Laws, you agrees to enter into a written variation to the Schedule to make the amendments which in our reasonable opinion are required.

PROCESSING OF PERSONAL DATA

The nature and purpose of the processing

We will process the personal data for the purpose of the provision of the Services.

Types of personal data

The personal data that is shared with us and our sub-processors:

- when providing interpreting services face to face or over the telephone;
- in any documentation which we translate on your behalf; and
- in any associated documentation provided by you.

Categories of data subjects

You and your employees.

The individual who we are interpreting on behalf of.

Any individuals we are provided with personal data about when interpreting or within the documentation which we translate on your behalf.

Any other individuals we are provided with personal data about within any associated documentation we are provided with when providing interpreting or translation services.

Duration of the processing

We will retain the Original Works, Translated Works and other materials which may contain Personal Data for 13 months from the completion of a Work Request for your convenience, to enable you to raise any queries relating to the Services or the Work Request. At the end of the 13 month period following completion of a Work Request or, if earlier, upon expiration or termination of this Agreement, we shall return (or shall delete if requested to do so by you in writing prior to the end of the 13 month period or within 14 days of the termination or expiration of this Agreement) all Personal Data (and shall delete any copies of it) in our possession or control to you unless we are required to retain the Personal Data in order to comply with applicable laws.

In relation to the Upgraded Services only, you have the right to cancel the Subscription which runs for 14 days from paying for the Upgraded Services.

YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND ACCEPT THESE TERMS AND CONDITIONS, THE DATA PROTECTION SCHEDULE AND THE LICENCE GRANTED HEREUNDER TOGETHER WITH OUR ACCEPTABLE USE POLICY AND PRIVACY POLICY AND YOU AGREE THAT YOU ARE ENTERING INTO A LEGALLY BINDING AGREEMENT WITH US.

WHERE YOU WISH TO OBTAIN THE UPGRADED SERVICES FROM US, YOU AGREE TO PAY FOR THEM EITHER:

1. BY USING A DESIGNATED THIRD PARTY PAYMENT PROVIDER, OR
2. BY REQUESTING AN INVOICE. YOU MUST PAY FOR THE UPGRADED SERVICES WITHIN 60 DAYS OF RECEIPT OF THE INVOICE.

IF YOU DO NOT PAY IN ACCORDANCE WITH EITHER OF THE ABOVE ALTERNATIVES, YOUR ACCESS TO THE UPGRADED SERVICES WILL BE WITHDRAWN BUT YOU WILL RETAIN THIS LICENCE.

IF YOU ARE USING THEBIGWORD GMS® ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS LICENCE AND THESE TERMS AND CONDITIONS.

Signature: Print Name: Date: