

PRODUCT TERMS - SAAS (ENGLISH LAW) | WORKFORCE MANAGEMENT

These Product Terms apply whenever Customer accesses or uses Capita’s Workforce Management software (including its individual components and modules) as a SaaS Product (as defined in the Master Terms). These Product Terms shall also apply when Customer purchases any Hardware associated with the Product(s) from Capita. These Product Terms are incorporated into the Product Order and, together with the Master Terms and the Professional Services Terms (if applicable), form part of the Agreement between Capita and Customer. In some cases, additional or modified rights to those provided in these Product Terms will be included in a Product Order.

1. **DEFINITIONS AND INTERPRETATION.**

1.1 Capitalised terms used in these Product Terms but not defined below are defined in the Master Terms.

“Authorised Purpose” has the meaning given to it in Paragraph 2.2 below.

“Business Day” means a day other than a Saturday, Sunday or public holiday in England.

“Hardware” means the hardware (or any part of it) to be provided by Capita to Customer as set out in the Product Order, and any additional hardware procured by Customer from Capita under the Agreement.

“Hardware Manuals” means any then-current user manual, handbook or other documentation for the Hardware made available by Capita for Customer’s use.

“Hardware Fees” means the fees payable by Customer to Capita for the Hardware, as set out in the Product Order.

“Hardware Support Services Fees” means the fees payable by Customer to Capita for the Hardware Support Services, as set out in the Product Order and which shall form part of the Support Fees.

“Hardware Support Services” means the support and maintenance services (which may be on a standard or premium basis) for the Hardware detailed in the Product Order, which are to be provided by Capita to Customer and which shall form part of the Support Services.

“Master Terms” means the Master Terms that, together with the Product Order, these Product Terms and, if applicable, the Professional Services Terms, form the Agreement between Capita and Customer, and which can be found at the following URL:<https://www.capitasoftware.com/customertermsandconditions>

“Normal Business Hours” 8.00 am to 6.00 pm local UK time on each Business Day.

“Product Support Services” means the support and maintenance services (which may be on a standard or premium basis) for the Product(s) detailed in the Service Charter and/or Product Order, which are to be provided by Capita to Customer and which shall form part of the Support Services.

“Quarter” means each period of three (3) consecutive months during a calendar year starting on 1 January.

“Required Work Document” means the document sent to Customer by Capita specifying the necessary work that Customer needs to undertake to the applicable Site(s) in order for Capita to be able to install the applicable Hardware.

“Service Charter” means the document setting out details of the Product Support Services provided by Capita, which can be found at www.capitaworkforcemanagement.co.uk or such other website as Capita may notify to Customer from time to time.

“Site” means the premises from which Customer carries out its business and where the Hardware is to be located, as specified in the Product Order.

“**Support Hours**” means the support hours during which Capita shall provide the Support Services, as detailed in the Service Charter.

“**Territory**” means each applicable territory set out in the Product Order.

1.2 Reference in these Product Terms to Paragraphs shall be to the paragraphs of these Product Terms or any annexures. References in these Product Terms to Sections shall be to the sections of the Master Terms.

2. **USAGE RIGHTS.**

2.1 Grant of Usage Rights. Subject to, and in consideration of, Customer’s payment of the Licence Fees and Customer’s and its Authorised Users’ continuing compliance with all other terms of the Agreement, Capita grants to Customer, during the applicable Usage Periods specified in the Product Order, a non-exclusive, non-transferrable, non-sublicensable and revocable:

2.1.1 right for Customer and its Listed Affiliates to access and use, solely by and through the Authorised Users, the Product(s) listed on the Product Order (including any changes pursuant to Section 3.6 of the Master Terms) and the relevant Documentation; and

2.1.2 licence for Customer and its Listed Affiliates to, solely by and through the Authorised Users, access, view and use the Content,

solely for the Authorised Purpose within the Territory.

2.2 Authorised Purpose. The “**Authorised Purpose**” is the receipt of, and use of, the Product(s) in accordance with the Agreement and the Documentation and solely for the internal business operations of Customer and its Listed Affiliates in relation to the management of their workforces.

2.3 Usage Caps and Fee Increases. The total number of Authorised Users will not

exceed the numbers set out in the Product Order. If at any time during a Quarter the number of Authorised Users exceeds the amount of Authorised Users that the Licence Fees for that Quarter were based on, then Customer shall be liable to pay a pro-rated increase in the Licence Fee for such additional Authorised Users for the remainder of that Quarter. Any such amount shall be included in the invoice for the next Quarter. If there is no invoice for the next Quarter, a separate invoice for such amount shall be raised and shall be payable in accordance with the terms of the Agreement. Capita will undertake monthly monitoring of Customer’s use of the Product(s) to determine the number of Authorised Users registered to use the Product(s).

2.4 Passwords. Customer undertakes that:

2.4.1 each Authorised User shall keep a secure password for his use of the Product(s) and Documentation;

2.4.2 such password shall be changed no less frequently than the period specified in the Product Order; and

2.4.3 each Authorised User shall keep their password confidential.

3. **SERVICE LEVELS.**

3.1 Subject to the terms and conditions of the Agreement, Capita will use reasonable efforts to meet or exceed the service levels set out in the Service Charter.

4. **HOSTING.**

4.1 Subject to Paragraph 3 and Customer’s compliance with its obligations under the Agreement, during the Usage Period Capita will, or will procure a Hosting Provider to, host the Product(s) (including any Customer Data) on the Capita IT Systems.

5. **PRODUCT SUPPORT SERVICES AND PROFESSIONAL SERVICES.**

5.1 Product Support Services. Subject to payment by Customer of all charges

- payable under the Agreement and Customer's compliance with its obligations under the Agreement, Capita will provide to Customer the Product Support Services.
- 5.2 Standard and Premium Product Support Services. Capita will provide Customer with Capita's standard Product Support Services during Normal Business Hours in accordance with Capita's Service Charter in effect at the time. Customer may request premium Product Support Services for an increased Licence Fee by indicating the requirement for premium Product support Services on the Product Order. Premium Product Support Services shall be provided during the applicable Support Hours and in accordance with the details set out in the Product Order and Capita's Service Charter in effect at the time.
- 5.3 Professional Services. Subject to payment by Customer of all charges payable under the Agreement (including the applicable Professional Services Fees) and Customer's compliance with its obligations under the Agreement, Capita shall perform Professional Services if, and as, specified in the Product Order or as may be agreed in writing between the Parties from time to time, in each case in accordance with the Professional Services Terms.
6. **HARDWARE AND HARDWARE SUPPORT SERVICES.**
- 6.1 Hardware. If Customer has elected to purchase Hardware and/or Hardware Support Services from Capita, subject to payment by Customer of all charges payable under the Agreement (including the Hardware Fees and Hardware Support Services Fees (as applicable)) and Customer's compliance with its obligations under the Agreement, Capita will supply Customer with the Hardware and/or Hardware Support Services (as applicable) in accordance with the provisions of this Paragraph 6, the Product Order and the Service Charter.
- 6.2 Standard and Premium Hardware Support Services. If Customer purchases Hardware Support Services, Capita will provide Customer with Capita's standard Hardware Support Services during Normal Business Hours in accordance with Capita's Service Charter in effect at the time. Customer may request premium Hardware Support Services for an increased Hardware Support Services Fee by indicating the requirement for premium Hardware Support Services on the Product Order. Premium Hardware Support Services shall be provided during the applicable Support Hours in accordance with the details set out in the Product Order and Capita's Service Charter in effect at the time.
- 6.3 Site preparation. Customer shall ensure that all of the work specified in the Required Work Document is completed at each Site at least fourteen (14) days prior to the scheduled date of installation of the Hardware concerned. Customer shall, at its own expense, provide necessary power, telecommunication facilities and access for the Hardware, unless otherwise specified by Capita. If Capita is unable to complete the installation of the Hardware due to any act or omission of Customer, Customer shall bear Capita's reasonable charges for additional storage, carriage and installation of the Hardware and Capita shall not be liable to Customer for any delay in completing the installation of the Hardware.
- 6.4 Hardware warranty. Capita warrants that the Hardware shall perform in accordance with any specifications provided to Customer for the period of twelve (12) months following installation of the Hardware at the Site(s). During such period, subject to Paragraphs 6.5, 6.6 and 6.7 of these Product Terms, Capita shall repair or replace (at its sole discretion) any Hardware that fails to comply with this warranty. For clarity, this warranty shall not be reset for any Hardware that is repaired or replaced in accordance with this Paragraph 6.4 but any remaining warranty period for such Hardware shall remain following such repair or replacement.
- 6.5 Hardware defects. Notwithstanding the content of the Service Charter, any defect in the Hardware or loss, damage, nuisance

- or interference whatsoever (consequential or otherwise) resulting from, or caused by or to, the Hardware, which results from interference or nuisance to the Hardware or from use in breach of any of the provisions of the Agreement, shall be the responsibility of Customer.
- 6.6 Additional charges. In the event that the Hardware:
- 6.6.1 is, or has been, used in connection with any hardware, software or consumables not supplied or approved in writing by Capita;
 - 6.6.2 has at any time been maintained, altered, modified, relocated or adjusted by persons other than Capita, its employees or its authorised agents;
 - 6.6.3 is, or has been, used in breach of any of the provisions of the Agreement; or
 - 6.6.4 requires maintenance or an increase in normal maintenance service time by reason of the fault or negligence of Customer, or for any other reason other than normal use,
- then Capita shall have the right if, in its sole discretion, it repairs or replaces the Hardware, to levy such additional charges as are reasonable.
- 6.7 Hardware Support Services restrictions. Customer hereby acknowledges that the Hardware Support Services cannot be provided in relation to Hardware that is more than five (5) years old, and that it therefore has an obligation to refresh each item of Hardware at least every five (5) years in order to continue to receive the Hardware Support Services for the applicable Hardware. Customer agrees that Capita may cease the provision of Hardware Support Services for any item of Hardware that is more than five (5) years old and Capita shall take account of such removal in the subsequent invoices issued
- in relation to the Hardware Support Services.
- 6.8 Customer obligations – Hardware. Customer shall:
- 6.8.1 provide all cabling and other equipment needed for the installation of the Hardware at the Site(s);
 - 6.8.2 ensure that the Hardware is kept under suitable conditions, as specified by Capita or set out in any Hardware Manuals, and permit only trained and competent personnel to use it and follow any operating instructions as Capita may give from time to time;
 - 6.8.3 notify Capita promptly if the Hardware is discovered to be operating incorrectly;
 - 6.8.4 at all reasonable times permit full and free access to the Sites and to the Hardware to Capita, its employees, contractors and agents, and provide them with adequate and safe working space and any telecommunications facilities as are reasonably required to enable Capita to perform the Hardware Support Services;
 - 6.8.5 provide Capita with any information that is reasonably requested in the performance of the Hardware Support Services;
 - 6.8.6 take any steps reasonably necessary to ensure the safety of Capita's personnel when attending the Site(s);
 - 6.8.7 not allow any person other than Capita to maintain, alter, modify or adjust the Hardware without the prior written approval of Capita;
 - 6.8.8 not move the Hardware from the location at which it was installed without the prior written

- approval of Capita (such approval not to be unreasonably withheld or delayed);
- 6.8.9 store any spare Hardware only in conditions approved by Capita, and make this spare Hardware available for periodic maintenance, as with all installed Hardware; and
- 6.8.10 only use supplies or materials supplied or approved by Capita (such approval not to be unreasonably withheld or delayed).
- 6.9 **Title.** Title to the Hardware shall not pass to Customer until payment of the Hardware Fees in respect of the Hardware has been discharged in full.
- 6.10 **Risk.** Risk in any part of the Hardware shall pass to Customer upon delivery at the Site(s) or any other place specified by Customer and agreed by Capita for delivery.
- 6.11 **Reinstatement fees.** In addition to Capita's rights under Section 8.8 of the Master Terms, if the Hardware Support Services expire or are terminated, and Customer wishes to have them reinstated, Capita shall be entitled to first inspect the Hardware to determine whether or not the Hardware is capable of being supported, and shall be entitled to charge Customer for its costs incurred in conducting such an inspection in addition to the applicable Hardware Support Services Fees.
- 7. SUPPORT SERVICES – OUT OF HOURS SUPPORT, REQUESTS, ADDITIONAL SUPPORT AND SERVICE CHARTER.**
- 7.1 **Out of Hours Support.** With the prior written agreement of Capita, Capita will provide Support Services outside of the Support Hours, subject to payment of additional charges at Capita's then current rates.
- 7.2 **Support Services requests.** In order to obtain Support Services, Customer must:
- 7.2.1 contact Capita's service desk by telephone (see the Service Charter for telephone number) or via Capita's customer portal (see the Service Charter for website link), or such other contact details as notified to Customer from time to time; and
- 7.2.2 provide Capita with sufficient information to enable Capita to reproduce the problem.
- 7.3 **Additional support fees.** If Customer uses Capita's service desk for general advice regarding the use of the Product(s) or Hardware, Capita reserves the right to treat this outside the scope of the Support Services, and to charge Customer additional fees. Such services shall be deemed to be Professional Services and shall be subject to Professional Services Terms (as the same are incorporated into the Product Order or, if no such terms have been incorporated, as may be notified by Capita to Customer) and the Professional Services section in the Product Order.
- 7.4 **Additional Support and Maintenance.**
- 7.4.1 Customer may from time to time request Capita to supply additional support and maintenance services outside the scope of the Support Services.
- 7.4.2 If Customer requests any such additional services, Capita shall use its reasonable endeavours to comply with Customer's request, but Customer acknowledges that Capita's ability to supply such additional services shall depend on the availability of appropriate resources at the time in question.
- 7.4.3 Where Capita agrees to provide additional services in accordance with Paragraph 7.4.2 above additional fees may apply, and such agreement shall be documented in an order for Professional Services, which shall be made under, and shall incorporate, the terms of the

Agreement.

7.5 Service Charter. Customer shall comply with Customer's responsibilities and all other obligations of Customer set out in the Service Charter. Capita may amend the Service Charter in its sole and absolute discretion from time to time.

8. **TERMINATION.**

8.1 The Parties' termination rights are set out in Section 11 of the Master Terms.

9. **DATA PROTECTION.**

9.1 Scope and status of the Parties.

9.1.1 In this Paragraph 9, the terms "controller", "data subject", "personal data", "personal data breach", "process" ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the EU General Data Protection Regulation (EU)2016/679 (the "GDPR"). "Data Protection Laws" means the GDPR, the UK Data Protection Act 2018 and any replacement or supplementary legislation applicable to the processing of personal data applicable in the European Union or the United Kingdom from time to time.

9.1.2 Capita acts as a data processor on behalf of Customer with respect to any personal data which is processed by Capita on behalf of Customer or any Listed Affiliates (each a "Customer Group Member") under the Product Order to the extent that it relates to the Product(s) (including in relation to any Support Services and Professional Services to be performed by Capita in relation to the Product(s) under such Product Order) (the "Customer Personal Data"). Customer may act as controller or processor in respect to Customer Personal Data. This Paragraph 9 sets out Capita's data processing obligations to Customer in

respect of Customer Personal Data. Details of the applicable processing activities (including categories of personal data and data subjects) are described in Annex 1 to these Product Terms.

9.1.3 Customer warrants, represents and undertakes to Capita that it (or the applicable Customer Group Member):

- (a) will comply at all times with the Data Protection Laws;
- (b) has all necessary consents and notices in place to enable lawful transfer (including international transfers, if any) of Customer Personal Data to Capita for the duration of the Agreement (including without limitation, lawful grounds for processing); and
- (c) will not transfer any Customer Personal Data to Capita in connection with the provision of Services by Capita, other than Customer Personal Data of Customer employees to the extent necessary for such employees to liaise with Capita in respect of such Services.

9.2 Capita's obligations. Where Capita processes Customer Personal Data under or in connection with the performance of its obligations under the Product Order, Capita shall:

9.2.1 process the Customer Personal Data only in accordance with the Agreement and with other mutually agreed and documented instructions of Customer (including in relation to any international transfer of Customer Personal Data made in accordance with Paragraph 9.3);

- 9.2.2 implement appropriate technical and organisational measures necessary to meet the requirements of Article 32 of the GDPR;
 - 9.2.3 ensure Capita staff authorised to process Customer Personal Data are subject to appropriate confidentiality obligations;
 - 9.2.4 be entitled to engage sub-processors to process Customer Personal Data (and this Paragraph 9.2.4 shall be deemed Customer's general written authorisation to the same). Capita shall:
 - (a) ensure that equivalent requirements to those set out in this Paragraph 9.2 are imposed on any sub-processor(s) through a written agreement;
 - (b) remain liable to Customer for the performance of the sub-processor's obligations; and
 - (c) where applicable, provide to Customer reasonable prior notice of any addition or replacement of such sub-processors.

Without prejudice to the foregoing general authorisation to appoint sub-processors, Customer will be deemed to have specifically consented to any new appointment if no objection is received within five (5) Business Days of Capita's notification;
 - 9.2.5 taking into account the nature of the processing and the information available to Capita, reasonably assist Customer to fulfil Customer's obligations under the Data Protection Laws:
 - (a) to respond to data subjects' requests exercising their rights; and
 - (b) with respect to security, data protection impact assessments, data breach notifications and consultations with data protection supervisory authorities;
 - 9.2.6 save as required by law, at Customer's option, either delete or return Customer Personal Data in Capita's possession to Customer on expiry or termination of the Agreement;
 - 9.2.7 make available to Customer such information as Customer reasonably requests and Capita is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by Customer (or agreed auditors other than Capita's competitors), as is necessary to demonstrate Capita's compliance with its obligations set out in this Paragraph 9. Customer will give reasonable notice of any audit, ensure that any audit does not disrupt Capita's business operations, ensure any agreed auditors (if any) are bound by appropriate (in Capita's opinion) confidentiality obligations to protect Capita's confidential information, and will be fully liable for any associated costs (including those of Capita); and
 - 9.2.8 notify Customer without undue delay after becoming aware of any personal data breach involving Customer Personal Data.
- Capita shall be entitled to charge Customer, at Capita's then-current rate card and expenses policy, for any Capita effort or costs under Paragraphs 9.2.5 to 9.2.8 (inclusive).

9.3 International transfers. Capita shall not transfer Customer Personal Data to any country or territory outside the European Economic Area (EEA) without Customer's

prior written consent (such consent not to be unreasonably withheld or delayed). For the purpose of this Paragraph 9.3, Customer hereby consents to Capita transferring Customer Personal Data to those entities in the territories listed at paragraph 1 (Approved Non-EEA sub-processors) of Annex 1 to these Product Terms. Any transfers authorised in accordance with this Paragraph 9.3 shall be subject to appropriate safeguards or derogations under Data Protection Laws. Where requested to do so by Capita, Customer shall execute the appropriate approved standard contractual clauses for transfers of Customer Personal Data from the EEA or the UK to third countries (“**Standard Contractual Clauses**”) as data exporter with the applicable Capita data importer entity and, where relevant, procure that the relevant data controller entity does the same. Customer agrees that if, pursuant to the Standard Contractual Clauses, Capita is obliged to provide a copy of any applicable sub-processor agreement, such agreement may have all commercial information, or clauses unrelated to the Standard Contractual Clauses, removed by Capita beforehand and that such copies will be provided by Capita in a manner to be determined in its discretion and only upon request by Customer.

9.4 Indemnity.

9.4.1 Subject to the limitations and exclusions of liability set out in the Agreement, each Party shall indemnify and keep indemnified the other Party against any liability, fines, claims, demands, expenses and costs (including reasonable legal fees) arising as a result of:

- (a) any breach by the other Party (including in the case of Customer, by any Customer Group Member and any other controller of the Customer Personal Data) of its obligations under Data Protection Laws; and/or
- (b) where Capita is the indemnified Party, Capita acting in accordance with any instruction, policy or procedure of Customer or any Customer Affiliate.

9.4.2 Subject to the limitations and exclusions of liability set out in the Agreement, Customer shall defend and indemnify, at its own expense, Capita from and against any third party claim against Capita to the extent arising out of or in connection with Customer’s breach of Paragraph 9.1.3(b) or Paragraph 9.1.3(c).

ANNEX 1
PERSONAL DATA AND PROCESSING ACTIVITY
1. Approved Non-EEA sub-processors

Destination	Recipient(s)	Conditions for transfer (if any)
India	Ventura (India) Private Limited whose registered office is at Wing C, Marisoft Annex, Vadgoan sheri, Kalyani Nagat, Pune, MAHARASTRA 411-0, India	Standard Contractual Clauses

2. Processing Activities

Subject matter of the processing	Personal data relating to Workforce Management and the completion of activities relating to Time and Attendance and Access Control.
Duration of the processing	The personal data will be processed for the duration of the Usage Period. The default retention period once an agreement has terminated/expired is twelve (12) months unless an alternative retention period is requested by Customer.
Nature and purpose of the processing	Data recorded by the Data Controller in the Time and Attendance and/or Access Control system will be held and processed on Capita's hosted infrastructure. The data will be used for the purpose of system upgrades, maintenance and support by Capita.
Type of personal data processed	Name; Address; Telephone Number; Bank account details; Date of Birth; Training Records; Doctor contact details; Ethnic Origin; Preferred Language; Religion; Nationality; Passport and Identity Verification; Absence events and reasons for absence; Pay rate; Job Title; Job Grade; Contracted Hours; and Skills.
Categories of data subjects	Customer personnel.
Obligations and rights of Customer	The obligations and rights of Customer are set out in the Agreement.