

PRODUCT TERMS – SaaS (English Law) | HEALTHCARE DECISIONS

These Product Terms apply whenever Customer licenses the Healthcare Decisions Products (including their individual components and modules) as a SaaS Product (as defined in the Master Terms). 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.

“Administrator Users” means those Authorised Users that have been granted administrative privileges/access rights and for whom administrator licences have been purchased as detailed in the Product Order.

“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 when banks in London are open for business.

“Capita Hosting Terms” the Capita Software and Content Hosting Terms set out at Annex 2 of these Product Terms.

“Changed Clinical Content” has the meaning given to it in Paragraph 3.5 below.

“Clinical Content” means the clinical information and protocols embedded in, or otherwise delivered by, the Product(s).

“Licensed Health Professionals” means physicians and clinically experienced nurses, nurse practitioners and physician assistants or their equivalents.

“Maintenance Release” means any update, release, patch or other adaption or modification of the Product, including any updated Documentation, that Capita may provide to Customer from time to time as part of the Support Services during the Usage Period, which may contain amongst other things, error corrections, enhancements, improvements, or otherwise amend the Product, but does

not include any New Version.

“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/customertersandconditions>

“New Version” means any new software component, module or part of the Product that provides additional functionality to the Product that Capita may from time to time introduce and market generally as a distinct licensed product and which Capita may make available to Customer at an additional cost under a separate Product Order.

“Site” means any premises that is owned or leased and operated by Customer and specified in the applicable Product Order (or as nominated by Customer to Capita in writing from time to time), at which the Product(s) is to be used by Customer.

“Support Hours” means 09:00 to 17:00 (GMT) on Business Days.

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

1.2 Unless otherwise specified, reference to Paragraphs in these Product Terms shall be to the paragraphs of these Product Terms or any annexures. References to Sections in these Product Terms shall be to the sections of the Master Terms.

1.3 For the purposes of these Product Terms, Content shall be deemed to include all Clinical Content and reference to Content shall be to the Content made available to Customer by the Product(s) under the applicable Product Order.

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 and conditions of the Agreement, Capita grants to Customer, during the Usage Period specified in the applicable Product Order, a non-exclusive, non-transferable, non-sublicensable and revocable licence for Customer and its Listed Affiliates to use, solely by and through the Authorised Users, the Product(s) (in object code form only) listed on the applicable Product Order (including any Maintenance Release provided to Customer pursuant to the provision of Support Services) and the relevant Content and Documentation, in each case solely for the Authorised Purpose within the Territory and at the Sites.

2.2 **Authorised Purpose.** The “**Authorised Purpose**” is the receipt of, and use of, the Product(s) by Customer and its Listed Affiliates for decision support for:

- 2.2.1 healthcare professionals, in respect of the TeleGuides Product; and
- 2.2.2 the general public, in respect of the WebGuide Product,

in each case in accordance with the Documentation and the terms of the Agreement (including the restrictions at Section 6 of the Master Terms).

2.3 **Scope of Licensed Access and Use.** The scope of the licence granted in these Product Terms is limited in the manner specified in the Product Order, which may be by: (i) number of Authorised Users or Administrator Users; (ii) identity of Authorised Users or Administrator Users; (iii) usage (i.e. volume of transactions); or (iv) population size of the Territory. Capita may monitor Customer’s use of the Product(s) in order to assess whether Customer is complying with the Usage Rights and its obligations under the Agreement. Where Customer’s use of the Product(s) exceeds the applicable scope

then Capita may charge additional fees for Customer’s continued use of the Product(s) in accordance with the applicable Product Order (or, if the same are not specified in the applicable Product Order, at Capita’s then prevailing rates.

2.4 **Licence Fee Exclusions.** Except as specifically set out in the applicable Product Order, the fees payable by Customer in accordance with the applicable Product Order do not include any hardware or the third party software products that Customer may be required to procure in order for Customer to utilise the various capabilities of the Product(s). Customer is responsible for the costs and licences to obtain such hardware or third party software.

3. **CLINICAL CONTENT**

3.1 Customer acknowledges and accepts that there is Clinical Content embedded in or otherwise delivered with the Software. Customer agrees that it shall only use the Clinical Content in conjunction with the Software and hence is prohibited from otherwise using, distributing, exporting or disclosing such Clinical Content.

3.2 In addition to Customer’s responsibilities under Sections 4 and 10.5 of the Master Terms, Customer accepts full responsibility for the selection of the Clinical Content and also accepts full responsibility for its use and the results obtained from such use including, without limitation, the provision of advice, information, health reference information or materials to any end customers or other third parties. It is Customer’s responsibility to ensure that the Clinical Content is not used unless it has been fully reviewed, amended as necessary and approved by a medical director and/or medical advisory panel responsible for overseeing the Clinical Content’s use. Customer shall defend, indemnify and hold Capita and its Affiliates harmless from and against any claim by any Authorised User, other Customer personnel, end customer or other third party that relates to such Authorised User’s, other Customer personnel’s, end customer’s or third

- party's use of, or reliance on, the Clinical Content (including any Changed Clinical Content).
- 3.3 Without prejudice to Sections 4 and 10.5 of the Master Terms and Paragraph 3.2 above, Capita warrants that the Clinical Content is as up-to-date as is reasonably possible at the time of publication and is reviewed and updated by Capita from time to time. However, it is the responsibility of Customer's own medical director and/or medical advisory panel to review and approve these updates prior to using any such Clinical Content. Capita shall not be liable for any use of any Clinical Content that has been superseded by updated Clinical Content.
- 3.4 Customer understands and accepts that the use of the Clinical Content requires the application of appropriate intellect and judgement at all times. Accordingly, Customer acknowledges that the Clinical Content is intended for use solely by Licensed Health Professionals. Customer shall ensure that all Licensed Health Professionals and other call handlers each receive appropriate training before using the Clinical Content.
- 3.5 Where Customer has requested a change to an element of the Clinical Content (the "**Changed Clinical Content**") (including not implementing an update under Paragraph 3.3), Customer accepts full responsibility for the use of any such Changed Clinical Content and the results obtained from such use including, without limitation, the provision of advice, information, health reference information or materials to any end customers or other third parties and Capita shall have no liability for such use or results.
4. **SERVICE LEVELS.**
- 4.1 Subject to the terms and conditions of the Agreement, Capita will use reasonable efforts to meet or exceed any service levels set out in the applicable Product Order.
5. **HOSTING**
- 5.1 **Hosting.** If the applicable Product Order states that Capita or a Hosting Provider will host the Product(s), Capita or such Hosting Provider (as applicable) will be responsible for the hosting environment for the Product(s) (including its individual components and modules). If the Product Order does not state that Capita or a Hosting Provider will host the Product(s), then Customer shall be responsible for hosting the Product(s) itself or procuring a Hosting Provider to host the Product(s).
6. **SUPPORT SERVICES AND PROFESSIONAL SERVICES.**
- 6.1 **Support Services.** During the Support Period, Capita will provide the following Support Services:
- 6.1.1 provision of Maintenance Releases in accordance with Paragraph 6.2 below;
- 6.1.2 at its sole discretion, enhancement of the Product(s) to cater for relevant statutory billing and legislative requirements;
- 6.1.3 if requested by Customer, additional support and maintenance in accordance with Paragraph 6.5 below; and
- 6.1.4 any other Support Services specified in the applicable Product Order.
- 6.2 **Maintenance Releases.**
- 6.2.1 All Maintenance Releases provided by Capita to Customer are deemed to be part of the applicable Product. For the avoidance of doubt, the cost of the provision of Maintenance Releases is included in the Licence Fees, but excludes any sums payable by Customer for Professional Services in respect of assistance to Customer to support the deployment of a Maintenance Release.
- 6.2.2 Once a Maintenance Release has been placed into production use

- by Customer, Customer shall, on Capita's request, certify in writing to Capita that all copies of the Product(s), or any part of the Product(s), which is/are superseded by that Maintenance Release then in its possession, custody or control have been deleted by Customer.
- 6.3 New Versions Excluded. Customer acknowledges and agrees that any New Versions of the Products that Capita may, in its sole discretion, release from time to time are not included as part of the Support Services. Fees for any New Versions and any related Professional Services shall be charged and invoiced to Customer following acceptance by Capita of a new Product Order for such New Version.
- 6.4 Upgrade to New Versions. Customer shall upgrade to New Versions to ensure that the version of the Product(s) used by Customer is no older than N-1 (one version behind the latest New Version). In the event of breach of this Paragraph, Capita may terminate the Support Services.
- 6.5 Additional Support and Maintenance.
Customer may from time to time request Capita to supply additional support and maintenance services outside the scope of the Support Services, however Capita is not obliged to accept such requests. Where Capita agrees to provide any such additional services, 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.
- 6.6 Support requests. In order to obtain Support Services, Customer must:
- 6.6.1 contact Capita via <https://support.capitasoftware.com/csm>, or such other contact details as notified to Customer from time to time; and
- 6.6.2 provide Capita with sufficient information to enable Capita to provide the Support Services.
- 6.7 Additional support. If Customer uses Capita's service desk for general advice regarding the use of the Product(s), 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 applicable Product Order or, if no such terms have been incorporated, as may be notified by Capita to Customer) and the Professional Service section in the applicable Product Order. Customer will be informed before any such additional fees are incurred.
- 6.8 Modification of Support Services. Without prejudice to its other rights and remedies under the Agreement, Capita may modify or amend the Support Services by providing no less than 90 days prior written notice to Customer.
- 6.9 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 applicable 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.
7. **CUSTOMER OBLIGATIONS.**
- 7.1 Maintenance Releases. Unless otherwise agreed with Capita, Customer shall ensure that the Product(s) is maintained at the current Maintenance Release within 3 months of such Maintenance Release being made generally available by Capita.
- 7.2 Capita Hosting Terms. Where Capita (either itself or via a Hosting Provider) hosts the Product(s), Customer shall comply with the Capita Hosting Terms.

- 7.3 Copies of Products. Where Customer makes any copies of the Product(s) or Documentation, as permitted under Section 2.5 of the Master Terms, Customer shall maintain written records of such copies and their locations and shall provide such written records to Capita upon Capita’s request.
8. **CHANGES.**
- 8.1 Changes to Products. Capita may modify Products from time to time but will not change their fundamental nature, except in accordance with Paragraph 2 of Part G (Product Order Terms) of the relevant Product Order and Paragraph 8.2 below. Capita will use reasonable efforts to notify Customer of significant changes to Products.
- 8.2 Obsolescence.
- 8.2.1 Capita may obsolete:
- (a) a prior version of a Product on at least twelve (12) months’ prior notice following the general availability of a Maintenance Release or New Version; and
 - (b) any Product as a whole or any Support Services on at least twenty four (24) months’ prior notice.
- 8.2.2 Capita will have no obligation to provide Support Services in respect of obsolete Products (or versions thereof) at the end of the notice periods set out in Paragraph 8.2.1 above.
9. **TERMINATION.**
- 9.1 The Parties’ termination rights are set out in Section 11 (Usage Periods and Termination) of the Master Terms.
- 9.2 Destruction on Termination. In addition to its obligations under the Master Terms, on termination of a Product Order, within 30 days after such termination, forward to Capita or, if so requested by Capita, destroy all copies of the Product(s), Content and Documentation or any part thereof in its possession or that of any of its servants or employees and, if required by Capita, certify in writing to Capita the aforesaid things have been done.
- 9.3 Time is of the Essence. Due to the nature of Product(s) and the need for its protection as a trade secret and confidential proprietary information, time is of the essence in the return or destruction of the Products, Content and/or Documentation in accordance with the Agreement and in the event of Customer’s failure to do so within the specified timeframe, Customer agrees that Capita shall be entitled to obtain injunctive relief to require such return or destruction and such damages as a court of competent jurisdiction shall award.
10. **DATA PROTECTION.**
- 10.1 Scope and status of the Parties.
- 10.1.1 In this Paragraph 10, 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.
- 10.1.2 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 applicable 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 10 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. To the extent that there are additional processing activities to be performed pursuant to any Professional Services delivered by Capita, such processing activities shall be set out in the applicable Product Order.

- 10.1.3 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; and
 - (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 and purposes of the applicable Product Order (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 those categories of Customer Personal Data described in Annex 1 (Personal Data and Processing Activity) to these Product Terms.

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

- 10.2.1 process the Customer Personal Data only in accordance with the applicable Product Order 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 10.3);
- 10.2.2 implement appropriate technical and organisational measures necessary to meet the requirements of Article 32 of the GDPR;
- 10.2.3 ensure Capita staff authorised to process Customer Personal Data are subject to appropriate confidentiality obligations;
- 10.2.4 not engage sub-processors to process Customer Personal Data without Customer’s prior written consent (such consent not to be unreasonably withheld or delayed). For the purpose of this Paragraph 10.2.4, Customer hereby consents to Capita retaining those entities listed at paragraph 1 (Approved sub-processors) of Annex 1 to these Product Terms as sub-processors to process Customer Personal Data. Capita shall, in relation to any sub-processor appointed in accordance with this Paragraph 10.2.4:
 - (a) ensure that equivalent requirements to those set out in this Paragraph

- 10.2 are imposed on the sub-processor through a written agreement; and
- (b) remain liable to Customer for the performance of the sub-processor’s obligations;
- 10.2.5 taking into account the nature of the processing and the information available to Capita, reasonably assist Customer to fulfil Customer’s obligations under 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;
- 10.2.6 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 applicable Product Order;
- 10.2.7 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 10. 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
- 10.2.8 notify Customer without undue delay after becoming aware of any personal data breach involving Customer Personal Data.
- 10.3 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). Any transfers authorised in accordance with this Paragraph 10.3 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.
- 10.4 Indemnity.
- 10.4.1 Subject to the limitations and exclusions of liability set out in the Master Terms, 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.

10.4.2 Subject to the limitations and exclusions of liability set out in the Master Terms, 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 10.1.3(b) or Paragraph 10.1.3(c).

ANNEX 1

PERSONAL DATA AND PROCESSING ACTIVITY

1. **Approved sub-processors**

- Capita Affiliates

2. **Processing Activities**

Details of processing activities where Capita does not provide Hosting Services are set out in Column A in the table below. Where Capita provides Hosting Services, the additional details set out in Column B in the table below also apply.

	(A) Where Capita does not provide Hosting Services:	(B) Where Capita provides Hosting Services:
Subject matter of the processing	Capita’s performance of the Support Services, pursuant to which Capita may be provided with Personal Data relating to Customer personnel.	Capita’s performance of Hosting Services and related Support Services under the relevant Product Order in relation to Personal Data of patents stored on the Salus patient record CRM Product. <i>Note that the Customer remains responsible for triage of calls from members of the public and the product is operated by the Customer who is responsible for collection of the personal data.</i>
Duration of the processing	Personal Data will be processed for the duration of the Support Period.	Personal Data will be processed for the duration of the Hosting Period.
Nature and purpose of the processing	Receipt of Personal Data of Customer personnel in the course of providing technical support and maintenance services to Customer under the Agreement.	Storage of, and access to, Personal Data of patients in the course of providing Hosting Services and related Support Services under the Agreement.
Type of personal data processed	Including but not limited to: Customer personnel details including name, e-mail address, telephone number, work postal address and work email address.	Including but not limited to: Personal Data of Customer’s patients, including name, address, phone numbers and email address, date of birth, age, sex, ethnicity, details of physical or mental health, special notes relating to “Do Not Resuscitate” directives, and/or details of abusive behaviour.

Categories of data subjects	Customer personnel	Medical patients
Obligations and rights of Customer	As per the Agreement.	Customer controls the Personal Data and can determine the retention and/or destruction and use of the data pursuant to its rights and obligations under the Agreement. The Customer shall make reasonable endeavours to avoid providing patient Personal Data to Capita.

ANNEX 2

CAPITA HOSTING TERMS

Where it is agreed in the applicable Product Order that Capita will host the Product(s), these Capita Hosting Terms shall apply in addition to the Product Terms and these Capita Hosting Terms shall be deemed to be incorporated into, and shall form part of, the Agreement.

1. Definitions and Interpretation

Unless otherwise specified below, defined terms used in these Capita Hosting Terms shall have the meaning given to them in the Agreement:

- 1.1 **“Annual Hosting Fee”** is the annual hosting fee specified in the applicable Product Order and which shall form part of the Hosting Fees.
- 1.2 **“Hosting Period”** means the duration during which Capita will provide the Hosting Services, as specified in the Product Order.
- 1.3 **“Hosted Product”** means the Product that Capita is to host, as specified in the applicable Product Order.
- 1.4 **“Initial Hosting Fee”** is the initial hosting fee specified in the Product Order and which shall form part of the Hosting Fees.
- 1.5 In the event of any conflict between these Capita Hosting Terms and any other parts of the Agreement, the parties agree that the other parts of the Agreement shall take precedence.

2. Hosting Services

- 2.1 Upon payment of the Hosting Fees, Capita agrees to host the Hosted Products and its Content in accordance with the hosting arrangements set out in the Product Order and these Capita Hosting Terms.

3. Information Security

- 3.1 In addition to its obligations under Paragraph 13 (Data Protection) of the Product Terms, Capita will use all reasonable endeavours to protect the security of Customer’s information comprised within the Hosted Products and its Content. In particular, Capita will ensure that, if applicable, its Hosting Provider uses appropriate security arrangements in accordance with good industry practice, which shall include business continuity and disaster recovery arrangements.
- 3.2 Capita may analyse system logs in order to understand system usage and to provide for system improvement.

4. Hosting Support Services

- 4.1 Subject to timely payment of the Hosting Fees, and subject to the other provisions of these Hosting Terms, Capita and/or Capita’s designee will provide telephone support for problem reporting and verification relating to the Hosting Services.
- 4.2 Upon receipt of a request for assistance under paragraph 5.1 above, Capita may rectify the reported problem in such manner as it considers appropriate, including if necessary the provision of a work around solution.
- 4.3 The provision by Capita of any other support in respect of the Hosting Services should be subject to a separate written agreement. If Capita furnishes such additional support at Customer’s request without

a separate written agreement, such additional support shall be provided at Capita's then current rates on an "as is" basis without any express or implied warranty and Customer agrees to pay all reasonable travel, living and out-of-pocket expenses incurred by Capita in providing such additional support.

5. Termination of the Capita Hosting Terms

- 5.1 These Capita Hosting Terms shall terminate automatically on termination of the Usage Rights for the applicable Hosted Products.