

PRODUCT TERMS - SAAL (ENGLISH LAW) | ONE (EDUCATION, REVENUE AND BENEFITS, HOUSING, DIGITAL)

These Product Terms apply whenever Customer licenses the ONE Education, ONE Revenue and Benefits, ONE Housing and/or ONE Digital software 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.

“Approved Equipment” means any Equipment which is approved by Capita (such approval not to be unreasonably withheld) upon which the Product is to reside.

“Authorised User” has the meaning given to it in the Master Terms, and in the case of public facing portal solutions, includes consumers of Customer’s services provided via such portals where Customer has permitted and digitally recorded access and usage of the specific Customer functions for which the Product and Documentation are produced.

“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.

“Equipment” means any Hardware, CPU(s) and/or file servers, together with the operating system software appropriate for the Product owned or under the control of Customer upon which Product is to reside at the Location(s);

“Locations” means premises owned or operated by Customer at which the Approved Equipment and Product(s) will reside, as set out at Part G (*Customer Specific Requirements*) of the Product Order, or as otherwise agreed between the Parties in writing.

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

“Hardware Maintenance Period” means the period during which Capita shall provide the Hardware Maintenance Services, as specified in the applicable Product Order.

“Hardware Maintenance Services” means the hardware maintenance services, excluding any consumables supplied by Capita at Customer’s request, specified in the applicable Product Order, and which, if provided, shall form part of the Services;

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

“Maintenance Release” means any update, release, patch or other adaption or modification of the Product(s), 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(s), but does not include any New Version or New Module.

“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 Module” means any new software component, module or part of the Product(s) that provides additional functionality to the Product(s) 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.

“New Version” means any new version of the Product(s) (other than a New Module) that Capita may from time to time introduce and market generally as a distinct licensed product.

“Out of Hours Support Services” means any Support Services provided by Capita outside of the Support Hours, as specified in the Product Order.

“Service Charter” means the documents setting out details of the Support Services provided by Capita in relation to the ONE Products, as provided to Customer or which can be found at <https://support.capitasoftware.com/> or such other website as Capita may notify to Customer from time to time.

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

“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.

2. **USAGE RIGHTS.**

2.1 **Grant of Usage Rights.** Subject to and in consideration of Customer’s payment of the Licence Fees and 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 licence for Customer and its Listed Affiliates to use, solely by and through the Authorised Users:

2.1.1 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) on the Approved Equipment at the Locations; and

2.1.2 the relevant Documentation,

in each case within the Territory and solely for the Authorised Purpose.

2.2 **Authorised Purpose.** The **“Authorised Purpose”** means the use of the Product(s) for the internal business operations of Customer and its Listed Affiliates. The Authorised Purpose shall only extend to Customer’s own data processing and shall not be used to provide a data processing service or bureau service to any third party whether by way of trade or otherwise.

2.3 **Equipment.** Capita acknowledges that Equipment may be added to and/or replaced from time to time by Customer. In such circumstances the Usage Rights granted under this Paragraph 2 extend to such additional and/or replacement Equipment at a Location, provided that such Equipment is Approved Equipment. However, where Customer transfers ownership or otherwise disposes of Equipment, the Usage Rights granted hereunder in respect of the use of the Product(s) on the Equipment concerned shall be terminated automatically in respect of such Equipment at the time of its transfer or disposal and Customer shall ensure that the Product(s) has been deleted from the Equipment being disposed of and all copies destroyed prior to such transfer or disposal and Customer shall certify to Capita that such deletion and destruction has been done. The foregoing deletion shall also apply in relation to the disposal of disks containing copies of the Product(s).

2.4 **Copies of software.** With respect to a licence to use the Product(s) pursuant to Paragraph 2.1, such licence shall include a licence to make copies of the software as are reasonably necessary for Customers

and its Listed Affiliates' operational security and use and it shall maintain an accurate record of all copies made. Such copies and the media on which the copies are stored shall be the property of Capita and Customer shall ensure that all such copies clearly bear Capita's proprietary notice.

- 2.5 Modifications. Except to the extent expressly permitted by applicable law and in addition to the restrictions set out in Section 6.1 of the Master Terms, Customer shall not, nor permit others to, make for any purpose (including (without limitation) for error correction) any alterations, modifications, additions or enhancements to the Product(s) nor, save to the extent set forth at Paragraph 2.9, permit the whole or any part of the Product to be combined with or become incorporated in any other software or products.
- 2.6 Copies of Documentation. Customer may not make copies of the Documentation without the prior written consent of Capita. At the request of Customer, Capita may provide additional soft copies of the Documentation as Customer reasonably requires for the normal operation of its business. Customer may charge a reasonable fee for the provision of such Documentation.
- 2.7 Locations. Capita acknowledges that in certain circumstances a Location may be relocated. Provided that the change in the Location is agreed in writing by the Parties, the licence set forth at Paragraph 2.1 shall be deemed to apply to the new location.
- 2.8 Consents. In addition to Customer's obligations under Section 6.4 of the Master Terms, Customer shall be solely responsible for and liable in respect of any obligation upon Customer to obtain any government or other consent or licence for the ownership or use of any part of the Product(s), Documentation, Deliverables and Content.
- 2.9 Combinations. Customer may, subject to the prior written consent of Capita, at its sole expense and responsibility, combine the Product(s) with other software and/or

data to form a combined work, provided that such combination is for the purpose of printing or reporting and is not in breach of the restrictions set forth at Section 6 (Restrictions and Customer Obligations) of the Master Terms. If Customer notifies Capita that it requires any services from Capita as a result of such combination, then upon request from Customer, Capita may, at its sole discretion and subject to agreement of a Product Order for Professional Services, agree to provide Professional Services to Customer for the purpose of discussing, agreeing and implementing any such additional services.

- 2.10 Unauthorised use. Customer shall notify Capita immediately in writing if Customer becomes aware of any unauthorised use of the whole or any part of the Restricted Items by any person. Customer shall effect and maintain adequate security measures to safeguard the Restricted Items from access or use by any unauthorised person.
- 2.11 Use by third parties. Customer shall not, without the prior written consent of Capita, permit any third party other than an Authorised User to use the Product(s) or Documentation (such consent not to be unreasonably withheld).
- 2.12 Source code residing on Equipment. If and to the extent that, any source code of the Product(s) resides on any Equipment, such source code will have been provided to assist Capita in the provision of any Support Services, and no right to use the source code is provided either to Customer or to any third party.
- 3. **OWNERSHIP.**
 - 3.1 Customer shall not, and shall not permit any person, to do any act which endangers or prejudices Capita's rights to, or in, the Restricted Items.
- 4. **INDEMNITY.**
 - 4.1 The indemnity set forth at Paragraph 4.1 of Part H (Product Order Terms) of the relevant Product Order shall be limited to an indemnity from Capita to Customer in respect of reasonable costs and expenses

- incurred by Customer in respect of a third party claim of the type referred to at that Paragraph.
5. **SERVICE LEVELS.**
- 5.1 Subject to the terms and conditions of the Agreement, where any service levels are agreed and specified in the applicable Product Order or the Service Charter, Capita will use reasonable efforts to meet or exceed such service levels.
6. **HOSTING.**
- 6.1 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).
7. **SUPPORT SERVICES AND PROFESSIONAL SERVICES.**
- 7.1 **Support Services.** Subject to payment by Customer of all charges payable under the Agreement and Customer's compliance with its obligations under the Agreement, during the Support Period, Capita will provide the following Support Services:
- 7.1.1 the Support Services specified in Annex 1 and the Service Charter;
- 7.1.2 provision of Maintenance Releases in accordance with Paragraph 7.2 below; and
- 7.1.3 any other Support Services specified in the applicable Product Order.
- 7.2 **Maintenance Releases.**
- 7.2.1 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 Support Fees payable for the Support Services, but excludes any sums payable by Customer:
- (a) for Professional Services in respect of assistance to Customer to support the deployment of a Maintenance Release; and
- (b) in respect of the license of a New Module.
- 7.3 **New Versions.** New Versions are not included as part of the Support Services. If Customer requires a New Version of a Product, fees for such New Version 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.
- 7.4 **Exclusions.** The Support Services shall not include the following for which Capita may make an additional charge on a time and materials basis:
- 7.4.1 the support of other software, accessories, attachments, machines, systems or other devices not supplied by Capita nor provided pursuant to the Agreement;
- 7.4.2 rectification of lost or corrupted data arising for any reason other than Capita's own negligence;
- 7.4.3 support rendered more difficult because of any changes, alternations, additions, modifications or variations to the Product(s), the system or the operating environment made by or on behalf of Customer;
- 7.4.4 attendance to faults caused by using the Product(s) outside design or other specifications supplied with the Product(s); and

- 7.4.5 diagnosis and/or rectification of problems not associated with the Product(s).
- 7.5 Support requests. In order to obtain Support Services, Customer must:
- 7.5.1 contact Capita’s service desk using the contact details set out in the Service Charter, or such other contact details as notified to Customer from time to time; and
- 7.5.2 provide Capita with adequate information in respect of any malfunction in the Product(s) to enable Capita to reproduce the problem.
- 7.6 Additional Support Fees. 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 and the Professional Service section in the applicable Product Order. Customer will be informed before any such additional fees are incurred.
- 7.7 New Modules. Customer acknowledges and agrees that any New Modules of the Product(s) 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 Module and any related Professional Services shall be charged and invoiced to Customer following acceptance by Capita of a new Product Order for such New Module.
- 7.8 Current Release. Except as otherwise expressly agreed by Capita and Customer in writing, Customer must run only the current Maintenance Release level of the Product(s) that Capita has made available to its customers. Customer shall install all Maintenance Releases as soon as reasonably possible from the date they are made available by Capita. If Customer fails to comply with this Paragraph 7.8 with respect to the Product(s) used in any Location, Capita may insist on such installation and/or refuse to provide Support Services in respect of such Product(s).
- 7.9 Systems, platforms and environments. Capita reserves the right to specify which versions of third party products, operating systems, platforms and environments with which the Product(s) will run on.
- 7.10 Customer Responsibilities. Customer shall:
- 7.10.1 use its reasonable endeavours to ensure that a member of its staff, who is fully trained in all aspects of the Product(s) subject to the Support Services, will review the nature of all calls prior to reporting a fault or issue to Capita;
- 7.10.2 not permit anyone, other than Capita, to provide any support services or make any changes to the Product(s) or Documentation;
- 7.10.3 report suspected errors promptly to Capita and co-operate in efforts to provide a remedy including making skilled staff and necessary facilities (such as, but not limited to, telecommunications facilities) available in a timely manner to Capita free of charge;
- 7.10.4 following the delivery of corrections or technical improvements, test the same before using the Product(s) as so modified for the processing of live data;
- 7.10.5 provide to Capita all computer time, and access to the Customer System, facilities, resources, skilled staff and telecommunications as reasonably required by Capita in the provision of the Support Services;
- 7.10.6 provide Capita-approved telephone and appropriate access (for example, via a VPN

- connection) to facilitate the remote investigation of Product issues and upgrade such access solution as appropriate;
- 7.10.7 where Customer, or a third party procured by Customer, is hosting this Product(s), be solely responsible for carrying out all necessary back-up procedures for its own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason;
- 7.10.8 supervise and control the use of the Product(s);
- 7.10.9 maintain procedures to facilitate reconstruction of any lost or altered files, data or programs to the extent deemed necessary by Customer, and Customer agrees that Capita shall not be liable under any circumstances for any consequence arising from lost or corrupted data, files or programs;
- 7.10.10 where required for the proper performance of the Support Services by Capita, give Capita such access as may in Capita's opinion be necessary to Customer's or a Hosting Provider's premises, facilities, and systems;
- 7.10.11 provide Capita with all information reasonably requested by Capita from time to time relating to Customer's use of the Product(s), including information on Customer's Hardware, network and systems;
- 7.10.12 where required, establish VPN link(s), as specified in the latest published Capita SCS Connection Information exchange form, such establishment to be in accordance with any agreed implementation plan; and
- 7.10.13 comply with the Customer responsibilities and all other obligations of Customer set out in the Service Charter.
- Customer acknowledges that its failure to meet the Customer responsibilities set forth in this Paragraph 7.10 may result in delays in the provision of the Support Services and/or additional charges for resource time.
- 7.11 Out of Hours Support. In addition to the Support Services set forth at Paragraph 7.1, where specified in a Product Order, and subject to the terms of the Agreement and the payment of the separate Support Fees specified in the Product Order as payable in respect of Out of Hours Support Services, during the Support Period Capita will provide Out of Hours Support Services.
- 7.12 For the purpose of these Product Terms and without prejudice to the earlier termination or expiry of the Support Period, the Support Period shall automatically expire upon expiry or termination of the Usage Period.
- 7.13 Customer acknowledges that if some but not all of the Product(s) components or modules are subject to Support Services, if Customer Data is shared between such modules there may be detrimental effect on the Customer Data. Customer shall be solely responsible for such detrimental effect.
- 7.14 Additional Support Services.
- 7.14.1 Customer may from time to time request Capita to supply additional support and maintenance services outside the scope of the Support Services provided pursuant to the applicable Product Order, including but not limited to:
- (a) project management, consultancy, training or related services for the purpose of coordinating or interfacing the Professional Services with any other procurement, project or programme of work

- | | | | |
|-----|---|--------|---|
| | managed or run by Customer; | (i) | support required or made more difficult because of any failure by Customer to maintain adequate backups; |
| (b) | any support in relation to non-Product software, accessories, attachments, machines, systems or other devices (including as a result of a combination of the Product in accordance with Paragraph 2.9); | (j) | any support in relation to a Product not located in or conforming to the specified Approved Equipment; |
| (c) | any attempts to rectify lost or corrupted data (whether or not successful); | (k) | issues caused by accidents, modifications, support, relocation or misuse of a Product not attributable to Capita; |
| (d) | support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Product not made by Capita, or due to Customer's systems or operating environments, or third party information or materials; | (l) | Customer's networking or operating environment; |
| (e) | any support in relation to a Product, or any versions of a Product, that Capita has advised Customer are unsupported; | (m) | any support in relation to Customer's deployment of any New Version or New Module; and |
| (f) | faults caused by use of the Product outside its design or other specifications, or outside the scope of the Documentation; | (n) | any exit assistance (other than the return of items in accordance with the Agreement). |
| (g) | issues caused by Customer's failure to follow Capita's instructions or specifications; | 7.14.2 | In the circumstances set out in Paragraph 7.14.1 above, 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. |
| (h) | diagnosis and/or rectification of problems not associated with the Product; | 7.14.3 | Where Capita agrees to provide additional services in accordance with Paragraph 7.14.2 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. |

- Professional Services.
- 7.15 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.
- 7.16 Where Capita is to provide Customer with Professional Services in accordance with Paragraph 7.15, in addition to the Customer dependencies set forth at Section 4 of the Professional Services Terms, Customer shall, at all times and in a timely manner:
- 7.16.1 provide Capita personnel with a suitable workstation at the Location(s), which is installed with appropriate versions of the Product(s) and any reporting tools as required by Capita;
- 7.16.2 ensure that Customer has appropriate Third Party Software licences (such as applicable Oracle and Crystal software licences) that permit Capita's personnel to perform the Professional Services;
- 7.16.3 where possible, arrange appropriate car parking facilities for Capita personnel;
- 7.16.4 allow training for Capita personnel while at the Location(s) for the purpose of supporting staff development and improving levels of Customer support;
- 7.16.5 ensure that the required Customer staff are available for training on the dates specified in the implementation plan for delivery of the Deliverables;
- 7.16.6 provide to Capita all computer time, and access to Equipment, facilities, resources, skilled staff and telecommunications as reasonably required by Capita in the provision of the Professional Services; and
- 7.16.7 where required, establish VPN link(s), as specified in the latest published Capita SCS Connection Information exchange form, such establishment to be in accordance with any agreed implementation plan.
8. **HARDWARE.**
- Hardware Supply.
- 8.1 Where specified in the applicable Product Order and subject to the payment of the Hardware Fees, Capita will supply Hardware to Customer in accordance with the Hardware description, quantities and charges and the delivery dates and installation dates specified in the applicable Product Order.
- 8.2 Customer shall ensure that all necessary work at each Location is completed fourteen (14) days prior to the scheduled date of installation of the Hardware concerned. Customer shall, at its own expense, provide necessary telecommunication facilities unless otherwise specified in the applicable Product Order. 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.
- 8.3 On completion of the installation of the Hardware, acceptance tests will be conducted in accordance with the applicable Product Order and Professional Services Terms.
- Hardware Maintenance.
- 8.4 Where specified in the applicable Product Order and subject to the payment of the Hardware Maintenance Services Fees,

- Capita shall provide Hardware Maintenance Services at the Location(s) in respect of the Hardware, for the Hardware Maintenance Period(s) and at the Charges specified in the Hardware Maintenance Schedule.
- 8.5 In the event that the Hardware:
- 8.5.1 is or has been used in connection with any Hardware, software or consumables not supplied or approved in writing by Capita;
 - 8.5.2 has at any time been maintained, altered, modified or adjusted by persons other than Capita, its employees or its authorised agents;
 - 8.5.3 is or has been used in breach of any of the provisions of the Agreement; or
 - 8.5.4 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.
- 8.6 Customer shall:
- 8.6.1 maintain a current back-up copy of installed Product(s) and any other software including the Customer's Data in case of loss or damage during the performance of the Hardware Maintenance Services;
 - 8.6.2 ensure that the Hardware is installed in a suitable environment with appropriate facilities;
 - 8.6.3 use the Hardware only in accordance with published specifications and Capita directions and permit only trained and competent personnel to use the Hardware;
 - 8.6.4 notify Capita immediately where the Hardware does not operate correctly;
 - 8.6.5 permit, at its own expense, Capita full access to the Hardware and provide adequate working space and skilled staff support and reasonably necessary telecommunication facilities. Should Capita be delayed in gaining access to the Hardware, it may levy supplementary charges as are reasonable;
 - 8.6.6 establish a single authority for placing fault requests for Hardware Maintenance Services and notifying Capita of any movements of the Hardware. If, at its discretion, Capita responds to an unauthorised Customer representative, it may levy supplementary charges as are reasonable; and
 - 8.6.7 not store or use the Hardware except at the Location(s) without Capita's prior written consent (such consent not to be unreasonably withheld). All Capita assistance required in connection with any relocation may be subject to additional fees, and shall be documented in an order for Professional Services, which shall be made under, and shall incorporate, the terms of the Agreement.
- 8.7 **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.
- 8.8 **Risk.** Risk in any part of the Hardware shall pass to Customer upon delivery at the Location(s) or any other place specified by Customer and agreed by Capita for delivery.
9. **DATA MIGRATION.**

- 9.1 In respect of data migration, the Parties agree that:
- 9.1.1 responsibility for importing data extracted from the Product(s) and for extracting data from third party systems will reside with Customer or its authorised representatives;
- 9.1.2 data quality can adversely impact any data migration (including matching). Customer is responsible for ensuring the data quality is of a high standard to ensure a successful data migration takes place and is responsible for any post-migration corrective action that is required within the Product(s). Customer may request that Capita assists Customer with such corrective action, and Capita shall be entitled to charge Customer for the same;
- 9.1.3 Customer shall write data extraction routines and scripts from any source system;
- 9.1.4 data ‘stewardship’ and ownership resides with Customer with all decisions regarding, for example, resolution of possible duplicates residing with Customer; and
- 9.1.5 the generic data import functionality within the Product(s) will be used to import data from spreadsheets.
10. **CHANGES.**
- 10.1 Changes to Products. Capita may modify Products from time to time but will not change their fundamental nature, except in accordance with Paragraph 10.2 below and Paragraph 2 of Part H (Product Order Terms) of the relevant Product Order. Capita will use reasonable efforts to notify Customer of significant changes to Products.
- 10.2 Obsolescence.
- 10.2.1 Capita may obsolete:
- (a) a prior version of a Product on at least six (6) months’ prior notice following the general availability of a Maintenance Release or New Version;
- (b) any Product as a whole on at least twenty-four (24) months’ prior notice; and
- (c) any Support Services on at least twelve (12) months’ prior notice.
- 10.2.2 Capita will have no obligation to provide Support Services in respect of obsolete Products or versions of Products at the end of the notice periods set out in Paragraph 10.2.1 above.
- 10.3 Bespoke Developments. If Customer notifies Capita that it requires any bespoke developments to the Product(s) or Documentation, including: (i) any amendment, enhancement, upgrade that is not included in Capita’s generic product plan; (ii) any software changes that become necessary as a result of legislation changes which are required at short notice and are not part of the generic product plan; (iii) any changes requested on a regional basis only; (iv) any changes which are funded by central government; and (v) any changes requested by Customer that require a major rewrite of the Product(s), then, upon request from Customer, Capita may, at its sole discretion and subject to agreement of a Product Order for Professional Services, agree to provide Professional Services to Customer for the purpose of discussing, agreeing and implementing any such changes.
- 10.4 Service Charter. Subject to Section 7.9 of the Master Terms, Capita may amend the Service Charter in its sole and absolute discretion from time to time.
11. **EQUIPMENT.**

- 11.1 Customer responsibilities. It is Customer's responsibility to ensure that at all times:
- 11.1.1 Approved Equipment at each Location is suitable for the Product(s) to reside on it;
 - 11.1.2 Approved Equipment and any relevant cabling and connections are fully operational and in working order;
 - 11.1.3 memory and disk capacity of Approved Equipment is sufficient to allow the successful operation of the Product(s); and
 - 11.1.4 environmental conditions of the Approved Equipment are suitable.
12. **DELIVERY.**
- 12.1 This Paragraph 12 shall apply where Customer or a Hosting Provider appointed by Customer is to host the Product(s).
- 12.2 Capita shall deliver one copy of the Product(s) in machine readable form, on the media to the Location, or where more than one Location is specified in the Product Order, to such Location specified by Customer. The Documentation, if any, shall also be delivered to the Location or transmitted by email to the address specified in the Product Order.
- 12.3 Customer is responsible for ensuring that the Approved Equipment is installed and fully operational: (i) prior to installation and use of the Product(s); and (ii) where a Product Order states that Capita shall provide Professional Services which include installation of the Product(s), prior to the scheduled date of installation of such Product.
- 12.4 Customer shall install the Product(s) on the Approved Equipment and, if applicable, undertake set-up tests requested by a Location, save to the extent that the Parties agree that Capita shall undertake such activities. If the Approved Equipment is inoperable for any reason or if short-term disaster recovery tests are necessary, the licence granted under Paragraph 2.1 shall be temporarily extended for use with any other satisfactory Customer controlled Equipment notified to Capita until such failure has been remedied or such tests have been completed, provided that the use of the Product(s) on temporary or replacement Equipment shall be at the sole risk and responsibility of Customer and Capita shall incur no liability in relation thereto.
- 12.5 Risk in the Product(s) and Documentation will pass to Customer on delivery to Customer at the specified Location or such other place as specified by Customer and agreed by Capita for delivery.
13. **TIMELINESS.**
- 13.1 Capita shall use all reasonable endeavours to meet any delivery and/or other dates it has given to Customer, but time shall not be of the essence in relation to such obligations. In the event that Capita is not able to meet a date it has given to Customer, Capita will inform Customer as soon as reasonably practical.
14. **ESCROW.**
- 14.1 Capita warrants that it has deposited one copy of the most recent version of the source code of the Product(s) with NCC Escrow International Ltd ("**NCC**") and will update the deposited source code in accordance with any new general releases of the Product(s). Customer shall have a right of access to the source code in the event that Capita is placed in receivership or liquidation. This right is dependent upon Customer taking out a contract for this service with NCC and paying the appropriate charges directly to NCC.
15. **WARRANTY.**
- 15.1 The Parties agree that the warranty set forth at Section 10.2 of the Master Terms shall apply to the Product(s), save that the warranty period shall commence upon the earlier of:
- 15.1.1 Acceptance of the installation of the applicable Product on the Approved Equipment; and

- 15.1.2 Customer's first live use of the Product(s). applicable Product Order. Customer shall promptly inform Capita of any such additional users; and
16. **CHARGES AND PAYMENT TERMS.**
- 16.1 In addition to Capita's rights set out at Section 8.5 of the Master Terms, if Customer does not pay a Capita invoice in full by the due date specified at Section 8.5 of the Master Terms (or in this Product Order), Capita shall be entitled to repossess any of the Product(s), Documentation and Deliverables provided pursuant to this Product Order and/or cease the provision of the Support Services or Professional Services, and Customer irrevocably agrees to allow Capita to enter its premises without notice for such purpose.
- 16.2 If Capita is responsible for arranging shipping of the Product(s) to Customer, Capita may charge Customer the cost of providing suitable transport, packaging and insurance and any duties. Any such costs shall be estimated in the Product Order and the actual costs shall be invoiced by Capita in addition to the fees set forth in the Product Order.
- 16.3 Unless otherwise stated in the Product Order, if Capita provides Services at a Location, Capita shall be entitled to charge Customer the cost of providing a suitable means of travel, hotel accommodation, subsistence and related costs for Capita personnel. Any such costs shall be invoiced by Capita in addition to the fees set forth in the Product Order.
- 16.4 In addition to the fees set forth in the Product Order, Capita shall be entitled to charge Customer:
- 16.4.1 for the provision of any additional resources required as a result of failure by Customer to meet its obligations set out in the Agreement;
- 16.4.2 where the Usage Rights are restricted by number of Authorised Users, for the use of the Products by any users in addition to the number of Authorised Users specified in the
- 16.4.3 additional amounts in the event that the geographical boundaries of Customer change from those in place at the Agreement at the Effective Date of the Product Order or in the event of any local government reorganisation affecting Customer. Customer shall promptly inform Capita of any such proposed boundary change or reorganisation.
17. **TERMINATION AND SUSPENSION.**
- 17.1 In addition to the termination rights set out in this Paragraph 17, the Parties shall have their respective termination rights in Section 11 (Usage Periods and Termination) of the Master Terms.
- 17.2 Termination at the end of Relevant Periods. For the purposes of Product Orders relating to ONE Products, the notice period specified in Section 11.2 of the Master Terms shall be amended from thirty (30) days to six (6) months. The Parties' rights under Section 11.2 of the Master Terms shall apply to the termination of the Relevant Period in respect of the whole applicable Product or any individual module thereof.
- 17.3 Termination for change in law. Capita may terminate this Agreement in whole or in part by giving notice in writing to Customer if the United Kingdom Government announces the repeal of, or any substantive changes to, any legislation or the withdrawal of proposed legislation in connection with which any part of the Product(s), Documentation or any Services provided hereunder were designed or intended to assist Customer in fulfilling its own statutory obligations or those of its clients, such termination to be effective on the date on which such repeal, change or withdrawal takes effect.
- 17.4 Termination in the event of a change in legal capacity or status of Customer. Capita may terminate this Agreement

upon there being any change to the legal capacity or status of Customer, including, but not limited to, ceasing to exist as an entity in its own right, being subsumed within a larger educational establishment (in which instance Capita shall also be entitled to restrict Usage Rights to the subsumed Customer entity) or broken into smaller units, or becoming insolvent or bankrupt as an entity if legislation existing at the time permits such an event to happen to Customer.

17.5 Termination in the event of a force majeure. Either Party may terminate this Agreement if a force majeure event, as set out in Section 14.6 of the Master Terms, continues for a period of six (6) months and the delay caused by such force majeure event cannot be remedied within such period.

17.6 Termination of Support Services in relation to Third Party Software. Capita may terminate Support Services of any Third Party Software listed in the Product Order should such third party cease to provide software maintenance services on which Capita relies to provide Support Services.

17.7 Consequences of termination of Support Services. Without prejudice to Section 11.6 of the Master Terms, in the event of termination of the Support Services, Customer shall:

17.7.1 only where the Usage Period is perpetual, be entitled to set up a separate environment at the version of the Product(s) which was last released by Capita before the Support Services were terminated and continue to use that version at Customer's own risk and liability;

17.7.2 be unable to use the Product(s) or Documentation in an operating environment with other Capita products for which it is continuing to receive ongoing support and maintenance; and

17.7.3 be able to access the underlying data of a terminated module using applicable reporting tools.

17.8 Suspension. In addition to Capita's rights to suspend under the Master Terms, Capita may suspend the provision of any Services provided by Capita under this Agreement in circumstances otherwise entitling it to terminate this Agreement. Such suspension shall not be deemed to represent a waiver of Capita's right to terminate this Agreement (or part thereof). In the event that the Services have been suspended, Customer acknowledges that they may not be capable of reinstatement without additional services due to the continuing nature of updates made to the Product(s) and Documentation, and that therefore a reinstatement fee may become payable.

18. **DATA PROTECTION.**

18.1 Scope and Status of the Parties.

18.1.1 In this Paragraph 18, 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.

18.1.2 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

		<p>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 18.3);</p>
<p>18.1.3 Customer warrants, represents and undertakes to Capita that it (or the applicable Customer Group Member):</p> <ul style="list-style-type: none"> (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 the 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 2 (Personal Data and Processing Activity). 	<p>18.2.2 implement appropriate technical and organisational measures necessary to meet the requirements of Article 32 of the GDPR;</p> <p>18.2.3 ensure Capita staff authorized to process Customer Personal Data are subject to appropriate confidentiality obligations;</p> <p>18.2.4 unless otherwise specified in the applicable Product Order, be entitled to engage sub-processors to process Customer Personal Data (and this Paragraph 18.2.4 shall be deemed Customer's general written authorisation to the same). Capita shall:</p> <ul style="list-style-type: none"> (a) ensure that equivalent requirements to those set out in this Paragraph 18.2 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 	
<p>18.2 <u>Capita's obligations.</u> Where Capita processes Customer Personal Data under or in connection with the performance of its obligations under the applicable Product Order, Capita shall:</p> <p>18.2.1 process the Customer Personal Data only in accordance with the applicable Product Order and</p>		

- no objection is received within five (5) Business Days of Capita's notification;
- 18.2.5 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;
- 18.2.6 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;
- 18.2.7 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 18. 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
- 18.2.8 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 18.2.5 to 18.2.8 (inclusive).
- 18.3 International transfers.
- 18.3.1 Subject to Paragraph 18.3.2, 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).
- 18.3.2 Capita may transfer Customer Personal Data to Capita Affiliates located in India and in the United Kingdom. Customer's agreement to this Paragraph 18.3.2 shall be deemed to be the prior written consent of Customer.
- 18.3.3 Any transfers authorised in accordance with this Paragraph 18.3 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.

Capita to the extent arising out of or in connection with Customer's breach of Paragraph 18.1.3(b) or Paragraph 18.1.3(c).

18.4 Indemnity.

18.4.1 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 any Customer Group Member.

18.4.2 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

19. **NON-SOLICITATION.**

Neither Party shall approach directly or indirectly employees of the other with offers of employment for the duration of the Support Period and for a period of twelve (12) months thereafter. This will not restrict either Party from employing staff who apply unsolicited in response to general advertising or other general recruitment campaigns.

20. **FREEDOM OF INFORMATION.**

20.1 For the purpose of this Paragraph 20, "**Commercially Sensitive Information**" means commercially sensitive information including, without limitation, information relating to Capita's business, products, services and pricing of a confidential nature which Capita discloses to Customer whether before, during or after the Term of the Agreement.

20.2 If Customer receives a request under the Freedom of Information Act 2000 (the "**Act**") which relates to any of the Commercially Sensitive Information, Customer shall consult Capita and consider Capita's representations concerning such request.

20.3 In reaching a decision on disclosure, Customer shall take into account its obligations under the Agreement and the representations made in connection with the request by Capita but the decision of Customer, acting always in accordance with the Act, shall be final.

Annex 1**Support Services**

1. Capita shall provide Customer with a diagnosis of, and corrections for, intrinsic errors in the Product or Content.
2. During the Support Hours, Capita shall provide Customer with technical advice in respect of a Maintenance Release by telephone, internet access, electronic mail or any other means as may be introduced by Capita and as shall be agreed between the Parties.
3. The Support Services shall not include services in respect of:
 - 3.1 any defects or errors resulting from modifications to the Product(s) or Content by any person other than Capita;
 - 3.2 any changes to the Product(s) or Content required as a result of changes in any government legislation;
 - 3.3 any version of the Product(s) other than the most recent Maintenance Release and the immediately preceding Maintenance Release;
 - 3.4 incorrect or improper use of the Product(s) (which includes use of the Product(s) or Content for a purpose other than that envisaged by the Documentation), operational error, or failure to maintain adequate back-up copies of the Product and the Customer Data;
 - 3.5 any defects or errors caused by the use of the Product(s) or Content on or in relation to Hardware or Equipment, which is not Approved Equipment; or
 - 3.6 loss or damage to the Customer Data.

Annex 2

Personal Data and Processing Activity

1. **Approved sub-processors**

All Capita Affiliates from time to time.

2. **Processing Activities**

<p>Subject matter of the processing</p>	<p>Processing of subsets of personal data held within the Product(s) and various Third Party Software and plugins/modules for the purpose of resolving Customer issues. The management of Customer databases where Services are hosted.</p> <p>This data is used by Customer for:</p> <ul style="list-style-type: none"> • the management of Education and Children’s Services and associated activities; • provision of digital services to service users; • administration of the Customer’s Revenues and/or Benefits functions; and/or • Administration of the Customer’s Housing Management, Housing Contractor and/or Asset Management functions. <p>During any Support Period, Customer and third party contact information for the provision of Support Services.</p>
<p>Duration of the processing</p>	<p>For the duration of case investigation and providing of solution and subsequently for no longer than ninety (90) days once a case becomes inactive (this period commencing once a case has been closed).</p> <p>For the provision of Support Services, the duration shall be the Support Period. For the provision of Hosting Services, the duration shall be the Hosting Period.</p>
<p>Nature and purpose of the processing</p>	<p>The nature of the processing generally relates to Support Services, maintenance and upgrades and, if applicable, Hosting Services, and includes any processing operation such as recording, structuring, combining, storing, adapting, altering, retrieving, using, restricting, erasing, migration, destroying or otherwise processing data held within the supported Product. In order to resolve Support Service calls data will be held on the Capita support system where calls are logged.</p> <p>The purpose of the processing includes the provision of Support Services and maintenance services, Hosting Services (if applicable), statutory obligations, marketing,</p>

	information gathering, information provision, consultancy services, and implementation services supporting Customer in their activity as data controller.
Type of personal data processed	Types of personal data may be anything that is held within the Product(s) which includes personal and contact information, special category data, identifiers, financial information, online/digital behavioural information, data concerning health.
Categories of data subjects	<p>Categories of data subject include:</p> <p>(i) Customer staff, teachers, teaching assistance, volunteers, agents and temporary workers;</p> <p>(ii) children;</p> <p>(iii) parents and guardians; and</p> <p>(iv) other members of the public including website users, potential customers, suppliers and partners.</p>
Obligations and rights of Customer	<p>Customer's rights and obligations are set out in the Agreement.</p> <p>At the end of the Agreement, instructions shall be issued within thirty (30) days of expiry or termination by Customer confirming instructions to either return and/or destruct data.</p> <p>Data in relation to individual support cases will be securely erased ninety (90) days after the resolution of the case.</p>