

**PRODUCT ORDER (ENGLISH LAW) | PAY360 PRODUCTS**

This Product Order incorporates the current (as at the Agreement Effective Date) versions of: (i) the Master Terms; (ii) the Product Terms for the relevant Products set out in this Product Order; and (iii) where any Professional Services are performed in accordance with this Product Order, the Professional Services Terms, all of which can be found at the following URL: <https://www.capitasoftware.com/customertermsandconditions> (the “URL Terms”). This Product Order, together with the URL Terms, form the “Agreement” between Capita and the Customer specified in this Product Order.

The Agreement commences on the Agreement Effective Date specified in Part A below and continues until the Usage Period expires or the Agreement is terminated in accordance with its terms.

The Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous communications, understandings, and agreements concerning the subject matter hereof, whether written or oral. Each Party agrees that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

Capitalised terms used in this Product Order are defined in the Master Terms and/or the Product Terms and/or the Professional Services Terms.

**PART A: ORDER AND PARTY INFORMATION**

ORDER INFORMATION	
PRODUCT ORDER REFERENCE:	[insert]
DATE ORDER PLACED:	[insert]
AGREEMENT EFFECTIVE DATE:	[Date of signature of this Product Order by Capita] / [specify date]

CUSTOMER INFORMATION	
CUSTOMER:	[INSERT CUSTOMER NAME], [a company incorporated in [INSERT COUNTRY] (company number ([INSERT COMPANY NUMBER]) with its registered office at [INSERT REGISTERED OFFICE ADDRESS]
CUSTOMER CONTACT:	NAME: [insert]
	TITLE: [insert]
	ADDRESS: [insert]
	OFFICE PHONE: [insert]
	MOBILE PHONE: [insert]
	EMAIL: [insert]
BILLING INFORMATION (ONLY IF DIFFERENT FROM CUSTOMER CONTACT INFORMATION):	NAME: [insert]
	TITLE: [insert]
	ADDRESS: [insert]
	OFFICE PHONE: [insert]
	MOBILE PHONE: [insert]
	EMAIL: [insert]
LISTED AFFILIATES:	[insert] or [Not Applicable]

**CAPITA INFORMATION**

[INSERT APPLICABLE CAPITA BUSINESS NAME], a company incorporated in [INSERT COUNTRY] (company number [INSERT COMPANY NUMBER]) with its registered office at 65 Gresham Street, London, England, EC2V 7NQ.

**PART B: PRODUCT AND FEES INFORMATION**

PRODUCT	USAGE PERIOD	CHARGES	SUPPORT FEES
[insert]	[insert Usage Period e.g. 2 years] from Agreement Effective Date. The Usage Period shall automatically renew for a period of twelve (12) months at the end of the then current Usage Period unless terminated in accordance with the Agreement [or if the Customer provides Capita with not less than six (6) months notice of non-renewal.]	Initial Licence Fee: [insert] Annual Licence Fee: [insert] Transaction Fees: see below Set-Up Fee: [Number of Inclusive Transactions – if any – please provide full details]* Monthly Service Charge:	[Included in Licence Fees/Usage Period.] <b>OR</b> [£ add fee for Support Services]

[\*The Inclusive Transactions are the number of Transactions included in the Monthly Service Charge (if any) after which each subsequent Transaction will be charged at the Transaction Fee below. Where Inclusive Transactions are included in a Monthly Service Charge, all payment attempts which utilise the selected product/service, will be included in the calculation of the monthly inclusive number; e.g. if the Hosted Cashier monthly charge includes the first 1,000 transactions, then every transaction which utilises the Hosted Cashier service (successful or not) will count towards the number of Inclusive Transactions.]

**TRANSACTION FEES:**

PAYMENT TYPE OR PRODUCT	TRANSACTION FEE
1. Visa and Mastercard Credit & Debit cards (including Visa Checkout service); 2. Other Visa and Mastercard cards	[1.4% of total transaction value + 20p per transaction Excludes cards issued outside the UK or EU/EEA (see below)]
3. Mastercard Commercial Mastercard Credit Mastercard Debit Visa Commercial Visa Credit Visa Debit	[INSERT PRICING FOR EACH METHOD]
4. Visa and Mastercard Cards issued outside the UK or EU/EEA	[2.9% of total transaction value + 20p]
5. Paypoint 6. Post Office	[INSERT PRICING] [INSERT PRICING]
7. Payment Services Platform Transaction Fee	[ £ ] per Transaction
8. Optimize	[£ ] per Transaction
9. Chargebacks	[£15 per Chargeback]
10. Refunds	[£0.00]

11. Failed Transactions	[ ]

Capita reserves the right to change the Transaction Fees upon thirty days advance notice at any time during the Usage Period.

**[Minimum Transaction Processing Commitment]**

Services description	Minimum Transaction Processing Commitment	Agreed Pre-Payment fee	Transactions per annum			
			0 to 250,000	250,001 to 500,000	500,001 to 1,000,000	1,000,000 +
Description here	000	£0.00	£0.00	£0.00	£0.00	£0.00
Description here	000	£0.00	£0.00	£0.00	£0.00	£0.00
Description here	000	£0.00	£0.00	£0.00	£0.00	£0.00
Description here	000	£0.00	£0.00	£0.00	£0.00	£0.00
Description here	000	£0.00	£0.00	£0.00	£0.00	£0.00

[The Transaction Fees are subject to the agreed Minimum Transaction Processing Commitment of [X number/value/type of transactions being processed per annual (contract) year].

[Capita shall invoice Customer for the Minimum Transaction Processing Commitment on the earlier of the go-live date of the applicable Product or within 3 months of the Agreement Effective Date.]

[As per the Processing Volumes section within the URL Terms if the Minimum Transaction Processing Commitment is not achieved Capita shall invoice Customer for the difference between Charges due in relation to the actual Transactions (excluding any Transactions that fail or are not accepted for any reason) processed during the relevant period and the Charges that would have been payable had the Minimum Transaction Processing Commitment been achieved on the anniversary of the Agreement Effective Date.]

**Payment Card Processing Definitions:**

Term used in Payment Services Platform	General Description
Payment	One step authorisation and capture of funds.
PreAuth	Request for authorisation status for the consumer's payment account for the amount specified.
Capture	Request to take funds from the consumer's payment account. Relates to an associated authorisation.
PreAuth Void	Request to remove the authorisation shadow from the consumer's payment account where supported by the Acquirer. Ensures the Authorisation cannot be Captured in the future. Can be initiated by Customer or automatically by the platform after 7 days.

Refund	Returns an original Payment or Captured Authorisation, in part or in full, back to the Consumer's payment account.
Repeat	References a previous successful, repeatable, payments or authorisations for future payments or authorisations where the consumer is not present.
PayOut	<p>Visa Cardholder Funds Transfer (CFT) or MasterCard Payment of Winnings (PoW) to the consumer without reference to an original payment.</p> <p>Only supported for Gaming businesses with a 7995 MCC.</p>
Failed <transaction type>	A request for Payment, Authorisation, Capture, Cancel, Refund, Repeat or PayOut that is not accepted.

**PART C: SUPPORT SERVICES**

PRODUCT	SUPPORT SERVICES AND PERIOD
[insert]	<p>The Support Services set out in the Product Terms and Service Charter are provided during the Usage Period.</p> <p>New Versions are not included as part of the Support Services.</p>

**PART D: PROFESSIONAL SERVICES**

[N/A]

Or

[populate the below section]

All Professional Service provided under this Product Order are subject to the Professional Services Terms which can be found at the following URL: <https://www.capitasoftware.com/customertersandconditions>.

The Professional Services to be provided by Capita and the associated Professional Services fees are:

PROFESSIONAL SERVICES	SITE	DATES	PROFESSIONAL SERVICES FEES
CONSULTING	[insert]	[insert]	[insert]
IMPLEMENTATION	[insert]	[insert]	[insert]
CONFIGURATION AND/OR DEVELOPMENT	[insert]	[insert]	[insert]
TRAINING	[insert]	[insert]	[insert]
PROJECT MANAGEMENT	[insert]	[insert]	[insert]
OTHER (DESCRIBE): [insert]	[insert]	[insert]	[insert]

The Professional Services fees are generated by reference to Capita’s standard daily fee rates which are set out in the table below:

PROFESSIONAL SERVICES PERSONNEL	DAILY FEE RATE
[insert personnel role/level]	[insert daily fee rate]

Capita’s standard daily fee rates for an individual are calculated on the basis of an eight-hour day worked between the hours of 08:00 and 17:00 on a Business Day.

In the event that an individual engaged to provide the Professional Services is required to work outside the hours set out above, Capita shall be entitled to charge overtime at a rate of 125% of the standard daily fee rate.

Capita shall be entitled to charge the Customer for (i) any expenses in accordance with the Professional Services Terms; (ii) the costs of services provided by third parties and required by Capita for the performance of the Professional Services; and (iii) for the cost of any materials.

**Professional Services Description and Timetable:** A description of the Professional Services to be provided by Capita and the timetable for delivery is set out below:

[insert]

**Deliverables/Specification:** A description of the Deliverables and any specifications relating to the Professional Services to be provided by Capita is set out below:

[insert Deliverables and/or specification(s) relating to the Professional Services]

**Acceptance:** The Acceptance Period and Acceptance Criteria for the Deliverables are:

ACCEPTANCE PERIOD	[insert]
-------------------	----------

ACCEPTANCE CRITERIA

[insert]

If Customer fails to raise any issues with the Deliverables within two weeks of receipt, or if Customer uses the Deliverables in a live environment then the Deliverables are deemed to be accepted.

**PART E: INVOICING AND PAYMENT TERMS**

INVOICING AND PAYMENT TERMS					
<b>LICENCE FEES:</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><b>INITIAL LICENCE FEE:</b></td> <td>[Invoiced prior to Effective Date.] [Shall be invoiced: 50% on Agreement Effective Date, 30% on initial Customer Product testing and 20% on Product go—live] [N/A]</td> </tr> <tr> <td><b>ANNUAL LICENCE FEE:</b></td> <td>[Invoiced annually in advance.] [N/A]</td> </tr> </table>	<b>INITIAL LICENCE FEE:</b>	[Invoiced prior to Effective Date.] [Shall be invoiced: 50% on Agreement Effective Date, 30% on initial Customer Product testing and 20% on Product go—live] [N/A]	<b>ANNUAL LICENCE FEE:</b>	[Invoiced annually in advance.] [N/A]
<b>INITIAL LICENCE FEE:</b>	[Invoiced prior to Effective Date.] [Shall be invoiced: 50% on Agreement Effective Date, 30% on initial Customer Product testing and 20% on Product go—live] [N/A]				
<b>ANNUAL LICENCE FEE:</b>	[Invoiced annually in advance.] [N/A]				
<b>PROFESSIONAL SERVICES FEES:</b>	<p>[For configuration and/or development work: Invoiced following delivery of the configuration and/or development work in accordance with the Agreement.]</p> <p>[For all other Professional Services (including, without limitation, training, project management, hardware implementation and bespoke reporting): Invoiced monthly in <b>[advance]</b> / <b>[arrears]</b> ]</p>				
<b>TRANSACTION FEES</b>	Invoiced monthly in arrears, payable by Direct Debit from date of invoice.				
<b>FORM OF PAYMENT:</b>	Electronic (wire) transfer of immediately available funds to <b>[insert Capita account details for payment]</b> .				
<b>SUPPORT FEES:</b>	[ Invoiced annually in advance ]				
<b>OTHER CHARGES</b>	Invoiced monthly in <b>[advance]</b> / <b>[arrears]</b>				
<b>TAXES:</b>	The stated fees do not include applicable VAT or any relevant taxes, duties, or other governmental fees.				



**PART F: CUSTOMER SPECIFIC REQUIREMENTS**

---

[insert] or [Not applicable.]

**PART G: PRODUCT ORDER TERMS**
**1. GRANT OF USAGE RIGHTS**

1.1 Subject to Customer's and Listed Affiliates' and their respective Authorised Users' continuing compliance with the terms and conditions of the Agreement, Capita grants to Customer during the applicable Usage Period, the Usage Rights for the Products set out in this Product Order, as detailed in the applicable Product Terms for those Products. Unless explicitly stated otherwise in the Agreement, such Usage Rights shall be on a non-exclusive and non-transferrable basis.

1.2 The Products and any Content, Documentation and Deliverables are not sold to Customer.

**2. CHANGES**

2.1 Customer acknowledges that Capita reserves the right, in its sole discretion, to make any changes to the Products that it deems necessary or useful to:

2.1.1 maintain or enhance:

- (a) the quality or delivery of the Products;
- (b) the competitive strength of or market for Capita's services; or
- (c) the cost efficiency or performance of the Products; or

2.1.2 comply with applicable law.

2.2 Capita may make commercially reasonable changes to one or more of the URL Terms from time to time. If Capita makes a material change to any of the URL Terms, Capita will notify Customer using the contact details set out in this Product Order. If Customer does not agree to the change, Customer must notify Capita in writing within thirty (30) days of notice of the change. If Customer does not notify Capita in accordance with this Paragraph 2.2 that it rejects the change, then the amended URL Terms shall automatically apply and shall, along with this Product Order, govern the Agreement between Capita and Customer. If, in accordance with this Paragraph 2.2, Customer notifies Capita

that it does not agree to the change, then the applicable URL Terms in effect immediately prior to the change shall continue to govern the Product Order until the end of the then current Usage Period. If the Usage Period is then renewed (either automatically or by request of Customer) the updated URL Terms shall automatically apply to the Product Order for such renewed (and any subsequent) Usage Period, until further updated in accordance with this Paragraph 2.2.

2.3 Notwithstanding Paragraph 2.2, Capita is entitled to make changes to the Agreement that are required as a result of a required change by an Acquirer or other third party, in which case such change to the Agreement may take effect immediately on written notice to the Customer.

2.4 Capita may vary the Transaction Fees by giving the Customer four (4) weeks notice in writing at any time during the Usage Period that are required as a consequence of any change in the base rates of Capita's agreement with the relevant Acquirer or other third party cost increases.

**3. INTELLECTUAL PROPERTY RIGHTS**

3.1 Customer acknowledges and agrees that the Products, Services, Content, Documentation and Capita's name, logos and branding have been developed at substantial cost and expense by Capita and its licensors and that they constitute valuable commercial and proprietary property of Capita and its licensors. Customer further acknowledges and agrees that all Intellectual Property Rights in and to the Products, Services, Content, Documentation and Capita's name, logos and branding are (and will be) owned solely and exclusively by Capita and its licensors. Except as expressly stated herein, the Agreement does not grant Customer any rights to, under or in, any patents, copyright, database rights, trade secrets, trade names, trade mark (whether registered or unregistered), or any other rights or licences in respect of any part of the Products, Services, Content, Documentation or to Capita's Intellectual Property Rights.

- 3.2 Customer grants to Capita and its Affiliates:
- 3.2.1 a worldwide, perpetual, irrevocable, sub-licensable and royalty-free licence to use and incorporate into its services and products any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Authorised Users relating to the operation or use of Capita's services and products; and
- 3.2.2 a worldwide, irrevocable, sub-licensable and royalty-free licence for such period as is required by Capita to:
- (a) host and display Customer Data on the Product(s) in order for Capita to comply with its obligation under the Agreement; and
- (b) comply with any statutory or regulatory requirements.
- 3.3 If, for any reason and at any time during the term of the Agreement Customer acquires (whether by operation of law, contract, assignment or otherwise) any Intellectual Property Rights in the Products, Content, Deliverables or Documentation or in any changes, developments, improvements or configurations made to any such Products, Content, Deliverables or Documentation whether made by Capita, Customer, Reseller or a third party, Customer hereby unconditionally and irrevocably assigns (by way of a present and, where appropriate, future assignment), with full title guarantee, its entire rights, title and interest in and to all such Intellectual Property Rights to Capita and shall undertake all activities required by Capita in order to formalise and perfect such assignment.
4. **INDEMNITIES**
- 4.1 Subject to Paragraph 4.4 below, Capita will defend and indemnify, at its own expense, Customer and its Listed Affiliates from and against any third party (other than a Listed Affiliate or Authorised User) claim against Customer or its Listed Affiliates to the extent based on an allegation that any Product infringes any Intellectual Property Rights of that third party in effect at the Agreement Effective Date. Capita agrees to pay such damages or costs as are finally awarded against Customer or its Listed Affiliates by a court of competent jurisdiction or agreed to by Capita in settlement of such a claim provided that Customer:
- 4.1.1 gives Capita written notice of any such claim or threatened claim promptly after becoming aware of the claim or threat;
- 4.1.2 makes no admissions or settlements and does not prejudice Capita's defence of such claim or threatened claim;
- 4.1.3 gives Capita sole control of the defence, negotiations and settlement of such claim; and
- 4.1.4 fully cooperates in any defence or settlement of the claim (at Capita's cost). Capita shall not be liable for the settlement of a claim made without Capita's prior written consent.
- The defence and indemnification obligations set out in this Paragraph 4.1 shall not apply to the extent a claim arises from, or in relation to, Content.
- 4.2 If Customer's use of a Product results in, or in Capita's opinion is likely to become subject to, any claim of infringement or misappropriation, then Capita may, at its sole option and expense, either:
- 4.2.1 obtain for the Customer the right to continue using the Product;
- 4.2.2 replace or modify the Product so that it is non-infringing and substantially equivalent in function to the allegedly infringing Product; or
- 4.2.3 if the options set out in Paragraphs 4.2.1 and 4.2.2 above cannot be accomplished on commercially reasonable terms, then Capita may terminate Customer's rights to use the affected Product. If the option set out in this Paragraph 4.2.3 is invoked, then Capita will refund any unused

- prepaid Licence Fees for the affected Product.
- 4.3 The rights and remedies granted to Customer under this Paragraph 4 shall be Customer's sole and exclusive remedies and Capita's complete and entire responsibility and liability for any alleged infringement or misappropriation by any Product of any Intellectual Property Right or other proprietary right.
- 4.4 Capita shall have no obligation under Paragraph 4.1 above with respect to any claim of infringement or misappropriation by any Product of any Intellectual Property Right or other proprietary right based upon any of the following, and Customer shall defend, indemnify, and hold Capita and its Affiliates harmless from and against such claim:
- 4.4.1 combination of any Product with products, programs or data not furnished by Capita where, but for the combination, the claim would have been avoided;
- 4.4.2 any modification of a Product not made by Capita, if such claim would have been avoided by use of the unmodified Product;
- 4.4.3 negligence, abuse, misapplication, or misuse of a Product by or on behalf of Customer, any Listed Affiliate (or either of their Authorised Users), or a third party;
- 4.4.4 use of a Product by or on behalf of the Customer, any Listed Affiliate (or either of their Authorised Users) that is outside the purpose, scope, or manner of use authorised by the Agreement or in any manner contrary to Capita's instructions; or
- 4.4.5 compliance by Capita with Customer's requirements or specifications if and to the extent such compliance with Customer's requirements or specifications resulted in the infringement.
- 4.5 Except for claims in respect of which Capita is obligated to indemnify Customer and its
- Listed Affiliates under Paragraph 4.1 above, Customer will defend and indemnify, at its own expense, Capita and its Affiliates from and against any third party claim against Capita or its Affiliates to the extent arising out of or in connection with:
- 4.5.1 any claim that any Customer Data infringes or misappropriates such third party's intellectual property rights including Intellectual Property Rights, privacy, publicity, or other personal or proprietary rights, or that any Customer Data posted, displayed, distributed, broadcast, or otherwise published contains libellous, defamatory or otherwise injurious or unlawful material;
- 4.5.2 Customer's use of, or inability to use, any Product; or
- 4.5.3 Customer's failure to comply with the terms of the Agreement,
- and Customer agrees to pay such damages or costs as are finally awarded against Capita by a court of competent jurisdiction or agreed to by Customer in settlement of such a claim, provided that Capita gives Customer:
- (a) written notice of any such claim or threatened claim promptly after becoming aware of the claim or threat;
- (b) sole control of the defence, negotiations and settlement of such claim; and
- (c) full cooperation in any defence or settlement of the claim (at Customer's cost). Customer shall not be liable for the settlement of any such claim made without Customer's prior written consent.
5. **LIABILITIES**
- 5.1 Customer has, and will retain, sole responsibility for:
- 5.1.1 all Customer Data, including its content, use, accuracy, quality and legality;

- 5.1.2 all information, instructions, and materials provided by or on behalf of Customer, its Listed Affiliates or any Authorised User in connection with the Products;
  - 5.1.3 Customer Systems;
  - 5.1.4 the security and use of Customer's and its Authorised Users' Access Credentials; and
  - 5.1.5 all access to and use of the Products directly or indirectly by or through the Customer Systems or its or its Authorised Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.
- 5.2 In the event of loss or damage to Customer Data or Content, Customer's sole and exclusive remedy, and Capita's sole and exclusive liability, shall be for Capita to use its reasonable commercial efforts to restore the lost or damaged Customer Data or Content from the latest backup of such Customer Data or Content.
- 5.3 Capita shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data or Content caused by Customer or any third party given access by the Customer or for any failure of Customer to comply with Paragraph 5.1 above.
- 5.4 Except as expressly and specifically provided in the Agreement, Capita shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Capita by Customer in connection with the Product(s), or any actions taken by Capita at Customer's direction.
- 5.5 Nothing in the Agreement shall limit or exclude the liability of:
- 5.5.1 either Party for:
    - (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - (d) any breach of Section 9 (Confidentiality) of the Master Terms (save as set out in Paragraph 5.8 below);
  - (e) liability under any indemnity set out in Paragraph 4 (*Indemnities*) above; or
  - (f) any other liability which may not be excluded by law; or
- 5.5.2 Customer for:
- (a) Customer's obligation to pay any amounts due under the Agreement;
  - (b) any breach of:
    - (i) Section 2 (*Usage Rights*) of the Master Terms;
    - (ii) Section 5 (*Export*) of the Master Terms;
    - (iii) Section 6 (*Restrictions and Customer Obligations*) of the Master Terms;
    - (iv) Section 12 (*Legal Compliance*) of the Master Terms;
    - (v) Paragraph 3 (*Intellectual Property Rights*) above; or
    - (vi) Capita's Intellectual Property Rights; or
  - (c) any indemnity provided by Customer under the Agreement.
- 5.6 Subject to Paragraph 5.5 above:
- 5.6.1 neither Party shall be liable to the other whether in contract, tort

(including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise for:

- (a) any loss of profits, loss of anticipated savings, loss of business or opportunity, loss of contracts, depletion of goodwill and/or similar losses, loss or corruption of data or information, in each case whether direct or indirect; or
- (b) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and

5.6.2 without prejudice to other express provisions of the Agreement, each Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with the Agreement, or its subject matter, shall be limited to an amount equal in the aggregate to the greater of:

- (a) the total amount paid or payable by Customer under the Agreement for the Product or Services giving rise to the liability in the twelve (12) months immediately preceding the date of the first incident out of which the liability arose; and
- (b) five thousand pounds (£5,000).

5.7 All dates supplied by Capita for the delivery of any Product or the provision of any Services shall be treated as approximate only. Capita shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

5.8 Notwithstanding Paragraph 5.5.1(d) above, Capita's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with any breach of Section 9 (Confidentiality) of the

Master Terms in respect of Customer Data, shall be subject to the limitations and exclusions of liability set out in Paragraph 5.6 above.

5.9 Without prejudice to any other right or remedy available to Capita under the Agreement or at law, Capita's non-performance of, or delay in performing any of, its obligations under the Agreement will be excused to the extent such non-performance or delay results from any act or omission of Customer, its agents, subcontractors, consultants or employees. If Capita incurs any additional costs in performing any of its obligations under the Agreement following any such act or omission of Customer, Capita may charge Customer additional fees as is reasonably necessary to recover any such costs. Unless otherwise agreed by Capita, any agreed payment profile for the fees applicable to any such non-performed or delayed obligations shall not be affected by any such non-performance or delay and Customer shall remain liable to pay the applicable fees in accordance with the agreed payment profile notwithstanding any such non-performance or delays.

5.10 References in this Paragraph 5 to Capita and Customer (including where referred to as a 'Party') shall be deemed to be references to Capita together (and in the aggregate) with its Affiliates and Customer together (and in the aggregate) with its Affiliates, respectively.

5.11 Where Customer has incurred any liability to Capita, whether under the Agreement or otherwise and whether such liability is liquidated or unliquidated, Capita may set off the amount of such liability against any sum that would otherwise be due to Customer under the Agreement.

5.12 The provisions of this Paragraph 5 shall survive the expiration or termination of the Agreement and shall apply to the maximum extent permissible under applicable law, even if a remedy provided herein should fail of its essential purpose.

## 6. GENERAL

6.1 This Product Order may be executed in

separate counterparts, including by electronic or digital signature, and by the different Parties on the same or separate counterparts. Any signed copy of this Product Order made by reliable means will be considered an original, and all signed counterparts will constitute one and the same instrument.

**PRODUCT ORDER SUBMISSION AND ACCEPTANCE**

PRODUCT ORDER SUBMISSION AND ACCEPTANCE	
Order submitted by:	Order accepted by:
<b>[insert Customer's full legal name]</b>	<b>[INSERT CAPITA ENTITY, E.G. PAY360 LIMITED]</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



ANNEX 1

THIRD PARTY TERMS AND CONDITIONS

1. Customer shall comply with the following third party terms and conditions in accordance with Section 2.3 of the Master Terms:

[insert] or [Not applicable.]

**PRODUCT TERMS (UK) | PAYMENT SERVICES PLATFORM**

**1. SCOPE.**

1.1 These Product Terms apply whenever Customer licenses the Payment Services Platform (including its individual components and modules). The Payment Services Platform is a SaaS Product as defined in the Master Terms.

1.2 The terms and conditions that apply to the Payment Services Platform consist of the Master Terms, these Product Terms, the applicable Product Order and all Payment Application-Specific Additional Terms attached to these Product Terms that apply to the Payment Applications identified in the applicable Product Order.

1.3 The Payment Services Platform can only be used to process Transactions when the Customer has a current Merchant Account approved by Capita. These Product Terms only apply to the Payment Services Platform and there are separate terms and conditions that are applied by an Acquirer to a Merchant Account.

1.4 In some cases additional or modified rights to those provided in these Product Terms will be included in a Product Order.

**2. DEFINITIONS AND INTERPRETATION.**

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

**“Account Provider”** means any organisation through which settlement processing facilities are provided to Customer.

**“Acquirer”** means a financial institution with which Customer has entered into a Merchant Contract and Capita has entered into an agreement with or is accredited to forward Transaction Data for Authorisation,

clearing and settlement; for the avoidance of doubt Capita is not the Acquirer.

**“Agreement”** has the meaning given in the Product Order.

**“Application Management Fee”** means the non-refundable amount payable by Customer to Capita, if any, as specified and in accordance with the Product Order.

**“Authorisation”** means a request for and subsequent confirmation from the Acquirer or the E-Money Issuer that a payment will be credited to Customer in respect of any Transaction subject to the terms of the agreement entered into by Customer with the Acquirer or the E-Money Issuer (whatever the case may be).

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

**“Capita Acceptable Use Policy”** means the policy for acceptable use of the Payment Services Platform published by Capita from time to time and available at the URL as may be notified to Customer via the Merchant Portal or other Customer communication from Capita from time to time.

**“Capita Site Content Policy”** means the policy for hosted websites as issued on the Merchant Portal or otherwise communicated by Capita to Customer from time to time.

**“Card”** means any charge, credit, debit or payment card approved by Capita and the Acquirer from time to time.

**“Cardholder”** means a holder of any Card.

**“Cardholder Data”** means data submitted by a Cardholder relating to a Card, such as Card

numbers, Card security codes, Cardholder name, expiration data or other bank details.

**“Card Issuer”** means the financial institution that issued the Card to the Cardholder.

**“Chargeback”** means an invalid or disputed Transaction that is or may be charged to Customer by an Acquirer.

**“Charges”** means the fees and charges applicable to the Payment Services Platforms as set out in the Product Order (including but not limited to where applicable) the Set Up Fee, License Fee, Monthly Service Charge, and Transaction Fees) together with such other charges (including but not limited to Scheme Charges) as are notified to Customer by Capita from time to time.

**“Control”** means:

- a) in relation to a body corporate, the power of a person to secure:
  - i. by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
  - ii. by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate;
  - iii. that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person; and
- b) in relation to a partnership, means the right to a share of more than

one half of the assets, or of more than one half of the income, of the partnership.

**“Consumer”** means both a Cardholder and an E-Money Account Holder.

**“Customer Product”** means the goods and/or services that Customer makes available for sale, or use through the Customer Site.

**“Customer Site”** means Customer's web site(s) as notified to Capita by Customer from time to time.

**“Disputed Transaction”** means a Transaction which has been disputed by a Consumer, whether any such notification is made to Capita, the Acquirer or Customer.

**“E-Money”** means monetary value, as represented by a claim on the issuer, which is:

- a) stored on an electronic device;
- b) issued on receipt of funds; and
- c) accepted as a means of payment by persons other than the E-Money Issuer.

**“E-Money Account”** means the trust account operated by the E-money Issuer into which monies collected from E-Money Account Holders are held for the purposes of allowing payments to Customer.

**“E-Money Account Holder”** means a consumer who wishes to buy goods and/or services using funds the consumer has deposited in its E-money Account.

**“E-Money Issuer”** means a third party approved by Capita in writing authorised by the Financial Services Authority to issue E-money to consumers.

**“Event Data”** means information relating to a Consumer or Customer (other than Transaction Data).

**“Failure Notice”** means a notice from the Acquirer or the E-Money Issuer that a request for payment has been declined in respect of any Transaction.

**“Hosted Site”** means the payment page provided by Capita for the purpose of capturing and processing Transactions.

**“Initial Term”** means, with respect to the Payment Service Platform and each applicable Payment Application, the period from the Effective Date for the period specified in the Product Order.

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

**“Merchant Account”** means the account or accounts provided by Customer's Acquirer for the purposes of collecting, holding, remitting, deducting or otherwise dealing in funds pursuant to this Agreement in accordance with the terms of the Merchant Contract. Merchant Accounts can include MOTO (Mail Order Telephone Order) and or Internet Merchant Accounts (IMA) or such other accounts as the Acquirer may determine from time to time.

**“Merchant Contract”** means the agreement between Customer and the Acquirer for acquiring services.

**“Merchant Portal”** means, where applicable, the online resource provided by

Capita which may be accessed by Customer or its authorised representatives for the purposes of accessing the Payment Services Platform, performing refunds and receiving management information, reports, notices relevant to the Payment Services Platform and any other forms of information or functionality that Capita wishes to provide from time to time which may include any portal, extranet or other communication method notified to Customer.

**“Merchant Portal Manual”**: the online manual available on the Merchant Portal as updated from time to time.

**“Minimum Transaction Processing Commitment”** means the volume or value of Transactions referred to in the Product Order which the Customer has agreed to purchase in advance. Charges for any Minimum Transaction Processing Commitment can be drawn from the pre-payment as the Payment Services Platform or relevant Payment Application are used by the Customer, thereafter as described in the Product Order.

**“Monthly Service Charge”** means the amount payable by Customer to Capita each month during the Term as specified and in accordance with the Product Order.

**“New Module”** means any new software component, module or part of the Product that provides additional functionality to the Services 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 (other than a New Module) that Capita may from time to time introduce and market generally as a distinct licensed product and which Capita may, only if New Versions are included as part of the Support Services as indicated on the applicable

Product Order, provide to Customer from time to time as part of the Support Services during the Usage Period, or, if New Versions are not included as part of the Support Services as indicated on the applicable Product Order, make available to Customer at an additional cost under a separate Product Order.

**“Optimize Manual”** means the manual related to the Optimize Service as made available by Capita and as updated from time to time.

**“Optimize Service”** means the Optimize Payment Application (including its individual components and modules) as further described in the applicable Payment Application-Specific Additional Terms and Optimize Manual.

**“Payment Application”** means each individual Product in addition to the Payment Services Platform provided by Capita to Customer under these Product Terms as identified in the Product Order.

**“Payment Application-Specific Additional Terms”** means the Payment Application-Specific Additional Terms as applicable to the Payment Applications or such other services as specified in the individual Payment Application-Specific Additional Terms attached to these Product Terms, as appropriate.

**“Payment Services Platform”** means the online system provided by Capita to Customer for the receipt of Transaction Data, the electronic transmission of Transaction Data to an Acquirer or the E-Money Issuer and communication between:

- a) Capita, the Acquirer and Customer; and
- b) Capita, the E-Money Issuer and Customer

for the purpose of facilitating the settlement of Card and E-Money Account payment requests as may be further described in the Product Order, and which for the avoidance of doubt shall include any service provided by Capita to Customer via the Merchant Portal and or as specified in these Product Terms.

**“Payment Services Platform Guide”** means the online documentation available on the Payment Services Platform as updated from time to time.

**“PCI-DSS”** means the Payment Card Industry Data Security Standard.

**“Personal Information”** means (a) all information classified by laws, rules, regulations or orders applicable to the Parties’ performance under this Agreement as personal data (or a similar category afforded individual protection), including, as applicable (i) all government-issued identification numbers (including National Insurance numbers, driver’s licence numbers, and passport numbers); (ii) all financial account numbers (bank account numbers, credit card numbers, and other information if that information would permit access to a financial account); (iii) individual medical records and biometric information, including any information on any worker or consumer’s health, disability, disease or product interests; (iv) reports of individual background checks and all other data obtained from a U.K. consumer reporting agency; and (v) data elements revealing race, ethnicity, national origin, religion, trade union membership, sex life or sexual orientation, and criminal records or allegations of crimes; and (b) any other data or information provided to or collected by Capita (i) that identifies, or when used in combination with other information provided hereunder or processed by Capita on behalf of Customer, identifies an individual or (ii) from which identification or contact information of an individual person

can be derived. Additionally, to the extent any other information (such as, but not necessarily limited to, case report form information, personal profile information, IP addresses, other unique identifiers, or biometric information) is associated or combined with Personal Information, then such information also will be considered Personal Information.

**“Refund”** means a Transaction where a Payment Transaction is reversed with the intention of crediting a Consumer's account.

**“Reporting”** means the provision of information in relation to Transactions and the Products and Services provided to Customer via the Merchant Portal, e-mail and or any other communication method that Capita may reasonably use from time to time.

**“Scheme”** means any organisation or payment system which manages and controls the issue and use of Cards and the clearing of Card transactions and which shall include (without limitation) Visa International and MasterCard Inc together with any other payment scheme and or E-Money Issuer as are notified to Customer by Capita from time to time.

**“Scheme Charges”** means such fees, payments and or charges as may from time to time be levied by the Schemes in respect of a merchant and or a merchant's activities including but not limited to BRAM Fees, Excessive Chargeback Program (ECP), Interchange Fees (IF) and or Global Merchant Audit Program (GMAP).

**“Scheme Rules”** means the operating rules and procedures issued by the Scheme and or E-Money Issuers and as notified to Customer by the Scheme, E-Money Issuers, Capita and or the Acquirer.

**“Security Data”** means any codes or other security measures relating to a Card or an E-

Money Account and used to verify the identity of the Cardholder or E-Money Account Holder and/or the authenticity of a Transaction (including verification numbers, also known as CVV, CSV or CVC codes).

**“Service Charter”** means the document setting out details of the Support Services provided by Capita, which can be found at Annex 2 and which Capita may update from time to time.

**“Set-Up Fee”** means the non-refundable amount payable by Customer to Capita as specified and in accordance with the Product Order.

**“Term”** means, with respect to the Payment Service Platform and each applicable Payment Application, the term as specified in the Product Orders applicable to the Product and/or Services.

**“Tokenisation Service”** means the holding by Capita of the Cardholder's Transaction Data to be used for repeat Transactions and the issuance to a merchant of a Token ID.

**“Tokenisation Commencement Date”** means the date from which Capita shall hold Cardholder Data for the purpose of use in the Tokenisation Service as specified in the Product Order and if no date is specified the Effective Date.

**“Transaction”** means: (1) a request made via the Payment Services Platform for collection of payment from or to a Cardholder via the relevant Card Issuer on behalf of Customer; and/or (2) a request made via the Payment Services Platform for collection of payment from or to an E-Money Account Holder via the relevant E-money Issuer on behalf of Customer; and/or (3) a data request (including but not limited to Authorisations) made by the Customer via the Payment Services Platform; and/or 4) a data check or request initiated by the Customer made via the Optimize Services.

**“Transaction Data”** means all information provided by a Consumer or obtained from any other source in particular the Acquirer or E-Money Issuer that is required for an Authorisation and/or processing of a Transaction, including without limitation Cardholder Data.

**“Transaction Fee”** means the amount payable by Customer to Capita for each Transaction and for each failed Transaction, if any, in each case as specified and in accordance with the Product Order.

**“Web Site”** means Capita web site, at URL <https://www.Pay360.com> or such other site as notified by Capita to Customer from time to time.

**3. USAGE RIGHTS.**

3.1 Subject to the terms of the Agreement, Capita will provide Customer with access to the Service as listed in the Product Order for Customer to use in accordance with the Payment Services Platform Guide as the same is amended from time to time and published on the Merchant Portal or otherwise provided to the Customer. Customer may customise the views and reporting in accordance with the parameters as specified in the Payment Services Platform Guide.

3.2 Capita will accept Transactions Data and Event Data from Customer for processing under the Payment Services Platform. The Data will be submitted in the format notified to Customer and integration guide relevant to the Payment Services Platform as the same may be amended from time to time.

3.3 The Transaction Data shall be in relation to the payment methods as specified in the Product Order together with such other payment methods as the Parties may from time to time agree in writing. Capita shall not be required to process Transaction Data arising from or in connection with any

payment method not previously agreed in writing.

3.4 The Event Data will be as specified in the Event Data fields and formats as agreed in writing by the Parties. If Customer wishes to amend or delete any data field in the current Capita template other than changes as to the content and such change shall be subject to the mutual written agreement of the Parties. Any such change will be considered a change request and as such will only be implemented at Capita's discretion and may be subject to additional charges and or fees.

3.5 Capita is not required under this Agreement to provide Customer with access to the software and or any other process used by Capita to provide the Products and Services.

3.6 Subject to the terms of the Agreement, Capita will accept Transactions from Customer and submit Transaction Data to the relevant Acquirer and the E-Money Issuer for the Term. On receipt of an Authorisation or Failure Notice, Capita shall provide details of the same to Customer via the Merchant Portal and or via a payment notification.

3.7 Capita can only provide the Payment Services Platform if Customer has a Merchant Contract with an Acquirer and or an agreement with an E-Money Issuer.

3.8 The Agreement is personal to Customer and in no event shall Customer use the Service for the processing of Transactions on behalf of a third party.

**4. CHANGES.**

4.1 If there is a change in circumstances affecting the provision of the Payment Services Platform or any Payment Application (including any regulatory or other change affecting the payment processing industry and/or any revised policies, guidelines or regulations issued by a

- Scheme direct to Customer or via the Acquirer or E-Money Issuer), Capita reserves the right in its sole option to make such alterations to the Payment Services Platform and any Payment Applications it deems reasonably necessary from time to time provided that such alterations shall not unless as a consequence of legislative, regulatory or Scheme developments or due to circumstances reasonably beyond Capita’s control have a material adverse effect on the functionality of the Payment Services Platform or any Payment Application. Any alterations to the Payment Services Platform or any Payment Application that are introduced pursuant to this Section 4.1 shall be notified to Customer via the Merchant Portal or via any other reasonable form of communication to the Customer by Capita.
- 4.2 Services described in the Payment Services Platform Guide may be added to this Agreement by agreement in writing by the Parties and shall be subject to the terms of the applicable Product Order and corresponding Product Terms as specified.
- 5. CAPITA OBLIGATIONS AND SUPPORT SERVICES.**
- 5.1 Capita will provide the Payment Services Platform in accordance with the terms of the Agreement and as set out in the Product Order(s).
- 5.2 In providing the Payment Services Platform, Capita will comply with all applicable laws and regulations and shall comply with any requirements that are notified to it by each E-Money Issuer or Acquirer and or Scheme.
- 5.3 Capita will provide the Payment Services Platform with reasonable skill and care and in accordance with standard industry practice.
- 5.4 Capita will use commercially reasonable efforts to make the Payment Services Platform available to Customer at all times except in the circumstances as set out in this Agreement and as specified either on the Merchant Portal or in any applicable Customer communications issued by Capita.
- 5.5 Capita will use commercially reasonable efforts to co-operate with each E-Money Issuer and the Acquirer and shall report to Customer promptly any relevant dispute between Capita and an E-Money Issuer or Acquirer and or Scheme.
- 5.6 If reasonably practicable, Capita will publish on the Merchant Portal advance notification of any changes affecting the Payment Services Platform or advice notes relating to the provision of the Payment Services Platform. Customer should review the Merchant Portal for announcements on availability of the Payment Services Platform.
- 5.7 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. 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.
- 5.8 Where specified in a Product Order, and subject to the terms of the Agreement and the payment of all charges payable under the Agreement (including the Support Fees), during the Support Period Capita will use reasonable endeavours to provide the Support Services contained in the Service Charter.
- 5.9 Capita will issue Maintenance Releases (including updated Documentation) as and when required and in whatever form (including by way of a local fix or patch of the Product(s) or a temporary bypass solution) at the absolute discretion of Capita. 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:
- 5.9.1 for Professional Services in respect of assistance to Customer to support the deployment of a Maintenance Release; and
  - 5.9.2 in respect of the licence of a New Module.
- 5.10 Where New Versions are procured by the Customer as part of the Support Services (as indicated in the Product Order):
- 5.10.1 Capita will issue New Versions (including updated Documentation) as and when Capita, at its absolute discretion, introduces and markets generally such New Versions. Any New Versions provided by Capita to Customer are deemed to be part of the applicable Product; and
  - 5.10.2 the cost of the provision of New Versions 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 New Version; and
    - (b) in respect of the licence of a New Module.
- 5.11 Where New Versions are not procured by the Customer as part of the Support Services (as indicated in the Product Order), Customer will need to enter into a new or amended agreement with Capita for such
- New Versions and must upgrade to the latest New Version.
- 5.12 Capita reserves the right not to provide Support Services in respect of any version of the Product(s) other than the most recent Maintenance Release or New Version and the immediately preceding Maintenance Release or New Version (insofar as New Versions are applicable).
  - 5.13 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. Customer will need to enter into a new agreement with Capita for such New Module.
  - 5.14 Customer may from time to time request Capita to supply additional support and maintenance services outside the scope of the Support Services, including but not limited to:
    - 5.14.1 any support in relation to non-Product software, accessories, attachments, machines, systems or other devices;
    - 5.14.2 any attempts to rectify lost or corrupted data (whether or not successful);
    - 5.14.3 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;
    - 5.14.4 any support in relation to a Product, or any versions of a Product, that Capita has advised Customer are unsupported;

- 5.14.5 faults caused by use of the Product outside its design or other specifications, or outside the scope of the Documentation;
- 5.14.6 issues caused by Customer's failure to follow Capita's instructions or specifications;
- 5.14.7 diagnosis and/or rectification of problems not associated with the Product(s);
- 5.14.8 support required or made more difficult because of any failure by Customer to maintain adequate backups;
- 5.14.9 Customer's networking or operating environment; and
- 5.14.10 any support in relation to Customer's deployment of any New Version or New Module.
- 5.15 In the circumstances set out in Section 5.14 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.
- 5.16 Where Capita agrees to provide additional services in accordance with Section 5.15 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.
- 6. SETTLEMENT AND REMITTANCE.**
- 6.1 Acceptance of any Transaction for processing by Capita and Capita's online confirmation of an Authorisation to Customer and/or a Consumer (whatever the case may be) does not guarantee the settlement of any Transaction.
- 6.2 Customer acknowledges that the Acquirer and the E-Money Issuer shall be solely responsible for paying the remittance to Customer and for the Authorisation and settlement of Transactions in accordance with the terms of Customer's agreement with the Acquirer and E-Money Issuer.
- 6.3 Customer is responsible for reconciling the settlement monies received from the Acquirer with the Transactions submitted to Capita for processing and to immediately notify Capita if there is any material discrepancy.
- 6.4 Capita accepts no liability to Customer for, and hereby expressly disclaims all liability for, any losses, damages, costs or expense arising out of any failure to pay a remittance to Customer on the relevant due date. Customer acknowledges that Capita will not enter into possession of and or have control over any settlement funds at any time.
- 7. CUSTOMER OBLIGATIONS.**
- 7.1 Customer shall promptly provide to Capita such information (including details of its account with the Acquirer and where relevant with the E-Money Issuer) as may be requested by Capita for the purposes of activating the Payment Services Platform or any Payment Application.
- 7.2 Customer acknowledges that any delay or failure to provide information and to comply with its obligations under this Agreement may result in Capita being unable to provide the Payment Services Platform and Payment Applications. Capita accepts no responsibility for, and hereby expressly disclaims all liability for, any losses, costs, damages or other liabilities arising from its inability to provide the Payment Services Platform or any Payment Application in such circumstances.

- 7.3 Customer represents, warrants and covenants that:
- 7.3.1 Customer is contracting in its capacity as a business (not a consumer) and has full capacity to enter into this Agreement;
  - 7.3.2 Customer has obtained all permissions, approvals, consents and releases necessary in connection with the Customer Site and the Customer Product provided in relation to the Transactions (including but not limited to the Intellectual Property Rights of any third party) and that the Transaction and the Customer Site and the Customer Product relating to the Transaction are not in any way unlawful;
  - 7.3.3 all information provided to Capita in connection with its application for Payment Services Platform and any other information it provides under this Agreement is correct and that no information has been withheld which could reasonably be expected to have adversely affected Capita's decision to enter into the Agreement;
  - 7.3.4 in submitting Transactions for processing or submitting or applying any other Customer instruction, policy or procedure, Customer is complying with all applicable licensing obligations, Scheme Rules, Acquirer instruction, laws, regulations, restrictions and orders including but not limited to the appropriate declarations, payments, approvals and or disclosures required to be made to or received from any regulatory, tax authority, Scheme and or third party as a consequence of or arising in connection with the Transaction;
- 7.3.5 Customer will notify Capita of any and or all Customer Sites selling and or providing the Consumer with the Customer Product;
- 7.3.6 any other materials or information submitted to the Payment Services Platform or otherwise made available by Customer on the Customer Site are owned or properly and sufficiently licensed by Customer and comply in all respects with the Capita Site Content Policy;
- 7.3.7 the Customer Site, Customer Products, and any other materials or information displayed, supplied or otherwise made available by Customer on the Customer Site do not and will not infringe the Intellectual Property Rights or any other similar rights of any third party; and
- 7.3.8 Customer has or will have prior to processing any Transactions a Merchant Contract and that no Transactions will be submitted to Capita unless a valid and current Merchant Contract is in place.
- 7.4 Customer shall not incur any liabilities on behalf of Capita or pledge Capita's credit or make any representations or give any warranty on behalf of Capita or hold itself out as having power to do any of these things.
- 7.5 Customer is solely responsible for resolving all disputes with Consumers or other parties to a Transaction and shall act in a reasonable manner to resolve them and shall ensure that Capita is not cited, contacted or requested for information in relation to such disputes. Customer acknowledges that Capita does not provide support to Consumers and agrees to take sole responsibility for dealing with any questions,

- complaints or enquiries raised by any Consumer in relation to a Transaction.
- 7.6 Any Transaction which has been accepted where the Consumer is not present is taken entirely at Customer's own risk. Customer acknowledges and agrees that a Transaction of this nature may be subject to a later dispute, even where an authorisation was provided at the point of sale. Customer acknowledges and agrees that Customer is responsible for any Chargeback arising from a Transaction.
- 7.7 Customer shall keep Capita fully and effectively indemnified against all actions, claims, costs (including reasonably incurred legal fees on a solicitor and own client basis), damages, demands, expenses, losses and liabilities incurred by, or made against Capita as a result of Customer's acts, omissions or breach of this Agreement, Scheme Rules, Merchant Contract or any relevant law.
- 7.8 Customer is responsible for the safekeeping of the access codes issued to it for the Merchant Portal. Customer shall have procedures in place to limit access and loss, including (without limitation) only allowing specific users as defined within the Product Order to the Merchant Portal. Capita shall not be responsible for, and hereby express disclaims all liability for, any losses, liabilities and expenses due to or arising from any failure to keep any access codes safe in accordance with this Section 7.8. Customer shall at all times act in accordance with the Merchant Portal Manual and shall not misuse the Payment Services Platform or Merchant Portal by introducing viruses or other material which is technologically harmful. Customer must not attempt to gain unauthorised access to the Payment Services Platform or Merchant Portal, the server on which the Payment Services Platform or Merchant Portal is stored or any server, computer or database connected to the Payment Services Platform or Merchant Portal. Capita reserves the right to suspend
- Customer's access to the Payment Services Platform and Merchant Portal at any time without notice to Customer.
- 7.9 Customer acknowledges that from time to time the Payment Services Platform may use and or incorporate Intellectual Property and or data supplied by third parties. The terms applicable to any such Intellectual Property and or data shall be incorporated into and or referenced in the Capita Acceptable Use Policy and/or the Product Order and the Customer is responsible for complying with such applicable terms.
- 8. CUSTOMER DATA OBLIGATIONS.**
- 8.1 Customer is responsible for:
- 8.1.1 Obtaining all necessary consents and permission to provide Transaction Data and or Event Data to Capita for use with the Payment Services Platform;
- 8.1.2 The development and maintenance of the integration used by Customer to submit Transaction Data and or Event Data from Customer to the Payment Services Platform;
- 8.1.3 Monitoring on a regular basis the Payment Applications, Services and reports and information made available via the Payment Services Platform and report any problems or anomalies to Capita in a prompt and timely manner;
- 8.1.4 The reconciliation of any settlement and/or Transaction information associated with the Payment Services Platform; and
- 8.1.5 Ensuring all Transactions Data and/or Event Data is submitted via the integrations to the Payment Services Platform.

- 8.2 **Event Data.**
- 8.2.1 Customer is required prior to submission of Event Data to Capita to identify to Capita any Event Data that includes Personal Information. The identification is by data field and not in relation to each item of Personal Information submitted.
- 8.2.2 Customer may request Capita to delete any Event Data and or transfer Event Data to Customer and or any third party nominated by Customer. Any such deletion or transfer service will be subject to the charges as specified at the time of transfer and or deletion.
- 8.3 **Data Consent.** Customer hereby consents to Capita's use of:
- 8.3.1 information relating to Customer and Customer's business (including Personal Information) in accordance with the Capita Privacy Policy located at [https://www.pay360.com/privacy](https://www.pay360.com/privacy;); and
- 8.3.2 Customer's Personal Information for marketing and research purposes as specified in the Capita Privacy Policy.
9. **RETENTION OF DATA.**
- 9.1 Capita shall not be required to retain Event Data and or Transaction Data provided in relation to or processed in relation to the Payment Services Platform upon expiration or termination of the Term.
- 9.2 Upon expiration or termination of the Term for any reason Capita shall if so requested by Customer be required no later than 28 days from the effective date of such expiration or termination to arrange for either:
- 9.2.1 the Event Data and or Transaction Data to be transferred, in a manner reasonably determined by Capita in accordance with its obligations under applicable law or PCI-DSS, as applicable, to Customer and or a third party nominated by Customer; or
- 9.2.2 Subject to legal and/or regulatory requirements, to delete the Event Data and or Transaction Data.
- 9.3 If Customer fails to provide instruction to Capita within 14 days of the expiration or termination of the Term, Capita shall within 28 days of the effective date of such expiration or termination delete the Event Data and within 540 days of the effective date of such expiration or termination delete the Transaction Data in order to comply with Scheme Rules for Chargeback management.
10. **COMPLIANCE.**
- 10.1 Customer will comply with all Scheme Rules, applicable laws, regulations and codes of practice in performing all activities under or pursuant to these Product Terms and shall not use the Payment Services Platform or permit the Payment Services Platform to be used in any manner which could, in Capita's reasonable opinion, damage Capita's or any of its Affiliates' reputation.
- 10.2 Customer represents, warrants and covenants that, by submitting Transactions for processing, Customer is fully and promptly complying with;
- 10.2.1 Scheme Rules, E-Money Issuer instructions and or the terms of the Merchant Contract;
- 10.2.2 Capita Acceptable Use Policy and Payment Services Platform Guide and any reasonable operating instructions or procedural guides

- which Capita may issue from time to time;
- 10.2.3 applicable laws, regulations, licensing obligations, restrictions and orders including but not limited to the appropriate declarations, payments, approvals and or disclosures required to be made to or received from any regulatory and or tax authority as a consequence of or arising in connection with the Transaction;
- 10.2.4 in relation to accepting Cards or E-Money Account payments (whatever the case may be) in payment for goods or services supplied by Customer.
- 10.3 Any breach by Customer of the provisions of this Section 10 shall be deemed a material breach that is not capable of remedy for the purposes of this Agreement.
- 10.4 Customer shall take all reasonable steps to detect and prevent fraud against Capita or any Consumer or other party involved in a Transaction. Customer shall immediately notify Capita if it knows or has reasonable grounds to suspect any fraudulent activity is being or may be committed in relation to the Payment Service Platform.
- 11. PCI-DSS.**
- 11.1 Capita warrants it will comply with all or any of Capita's PCI-DSS obligations and or requirements in performing all activities under or pursuant to these Product Terms in accordance with Capita's accreditation as a PCI-DSS service provider.
- 11.2 Capita is responsible for securing Transaction Data which is solely in the possession of and under the control of Capita. PCI-DSS sets out the industry standards for maintaining a secure environment. A copy of Capita's PCI-DSS compliance certificate can be found on Capita's website: <https://www.Pay360.com> or provided to Customer by contacting Capita merchant support via the contact details displayed on the Capita Merchant Portal and or Web Site.
- 11.3 Customer warrants it will comply with all or any PCI-DSS obligations and or requirements including but not limited to Customer's reporting, scanning and card data obligations and or such other fraud protection policies as may be approved or required by the Schemes from time to time and shall provide Capita with immediately notification of any breach or failure to comply.
- 11.4 Customer will not retain or store any Security Data except to the extent necessary for the authorisation of the relevant Transaction. Customer undertakes immediately after completion of each Transaction to procure the secure deletion or destruction of all associated Security Data. If Customer knows or has reason to believe that any Transaction Data (including Security Data) has been or may be lost, stolen or otherwise compromised, it shall immediately notify Capita of the same and provide full details of the circumstances leading to the relevant security breach.
- 11.5 Customer confirms it has in place and can take the appropriate action to ensure its website and or services are compliant with secure socket layer ("SSL") and has undertaken the necessary Payment Card Industry ("PCI") scans and or such other security actions as may be required under this Agreement, Scheme Rules, the E-Money Issuer and/or as specified in the Merchant Contract.
- 11.6 Customer is responsible for securing Transaction Data in Customer's possession and for compliance with Customer's PCI-DSS obligations.

- 11.7 The Parties agree the content of this Agreement may be disclosed to an approved PCI-DSS auditor for the purpose of a PCI-DSS audit.
- 12. REPORTING.**
- 12.1 Capita shall from time to time make management information, invoice information, Transactions information, change notices, service announcements and scheduled downtime available to Customer via the Merchant Portal. Any use by Customer of the Merchant Portal shall be subject to the Capita Acceptable Use Policy and the Merchant Portal Manual as the same may be amended from time to time.
- 12.2 Customer accepts full responsibility for regularly reviewing the Merchant Portal for information posted by Capita. Customer acknowledges that it is solely responsible for maintaining its own procedures to ensure that it is aware of any new notices or information published on the Merchant Portal from time to time.
- 12.3 Customer acknowledges that the accuracy of any information provided by the Payment Services Platform:
- 12.3.1 is subject to review by Capita as part of its normal procedures, and is subject to any changes that may be required following such a review by Capita.
- 12.3.2 reflects the entries that have been posted in relation to the relevant Payment Services Platform and that can be accessed through the Payment Services Platform at the time the information is obtained, and so may not be completely up to date.
- 12.3.3 contains information provided from third parties including but not limited to the Acquirer, E-Money Issuer and or Schemes and as such may not always be an accurate reflection of Customer's Transactions and or be complete, accurate and or up to date at the time of posting and or publication.
- 12.4 Customer acknowledges that Customer:
- 12.4.1 should carefully review the information obtained through using the Reporting and Transaction function with the Payment Services Platform.
- 12.4.2 should notify Capita promptly of any errors, inconsistencies or other discrepancies that Customer becomes aware of.
- 12.4.3 is responsible for reconciling all Transactions with Customer's provision of the Customer Product to the Cardholder.
- 12.4.4 is responsible for reconciling the information provided in relation to Transactions via any Reporting function in a timely manner and will immediately notify Capita if Customer becomes aware of any discrepancy including but not limited to any adverse or favorable variances.
- 12.5 Without limiting any other term of the Agreement, Capita does not represent or warrant that the Reporting and or Transaction function can be used to satisfy any of Customer's legal, audit, compliance, risk or other requirements.
- 13. SECURITY AND MERCHANT SYSTEMS.**
- 13.1 Capita is responsible for the security of Capita's own systems in accordance with its obligations to the Schemes and or PCI-DSS accreditation.

- 13.2 Capita is responsible for maintaining Capita’s interfaces to an Acquirer with which Capita has an agreement to submit Transactions.
- 13.3 Customer is responsible for complying with the Capita Site Content Policy. Capita shall not be responsible for any losses, liabilities and expenses due to or arising from any failure by Customer to comply with the Capita Site Content Policy and or the merchant instructions available on the Merchant Portal or notifications emailed to Customer.
- 13.4 Customer is responsible for any integration to Capita and for maintaining its interface with Capita and updating its interfaces and connections arising from any changes implemented by Capita.
- 13.5 Customer is responsible for testing and the regular monitoring all integration links, interfaces and processing between Capita and Customer. Customer will notify Capita immediately if Customer becomes aware of any problems with:
- 13.5.1 the processing of Transactions;
  - 13.5.2 the integration with Capita;
  - 13.5.3 the interfaces to Capita; or
  - 13.5.4 any other problems with the settlement, systems and or processes.
- 14. TESTING AND INTEGRATION.**
- 14.1 Customer acknowledges the integration process is determined by Customer and Customer’s own website and Customer is solely responsible for integration. Capita may at its sole discretion, but shall have no obligation to, provide assistance to Customer with the integration process.
- 14.2 If Customer is unable to complete the integration, Capita will not be required to refund any amounts Customer has paid to that date and is not liable for any costs, losses and or expenses arising from or in connection with the integration process and/or the Customer Site.
- 14.3 Capita shall not be liable for, and hereby disclaims any liability for, any errors, omission, losses or expenses arising directly or indirectly as a consequence of the integration process and or Customer’s testing, Customer’s website, integration and/or the integration guides.
- 15. TERMINATION.**
- 15.1 Where Capita has a right to terminate a Product Order, Capita may, at its option, elect to terminate the Product Order with respect to a particular category or categories of Products or Services. Where Capita elects to terminate a Product Order with respect to a particular category or categories of Products or Services such partial termination shall not affect the continuation of the Usage Rights of those Products or Services not terminated under this Section.
- 15.2 Capita may, at its option, suspend the Payment Services Platform and/or terminate the applicable Product Order and/or the Agreement with immediate effect on written notice to Customer if:
- 15.2.1 Capita has reasonable concerns about the financial position of Customer;
  - 15.2.2 Customer ceases or threatens to cease to carry on business or in any way changes the nature of its business and/or the nature of the goods and services it sells;
  - 15.2.3 there is a change in Control of Customer or of any person who has Control of Customer either directly or through a chain of persons each of whom has Control over the next



- person in the chain, a change of Control occurring if any person acquires Control of Customer or any person who previously had Control of Customer ceases to have such Control (whether or not another person acquires Control of the other party);
- 15.2.4 Customer engages in any activity which, in the absolute discretion of Capita, directly or indirectly competes with the business of Capita or any of its Affiliates;
- 15.2.5 Customer breaches the Scheme Rules or the Capita Acceptable Use Policy;
- 15.2.6 Customer ceases to have a Merchant Contract with an Acquirer or fails to enter into a Merchant Contract with an Acquirer or does not comply with the Capita risk and compliance processes applicable to a merchant;
- 15.2.7 Customer is subject to a security breach, threat, virus and or adverse event which in the reasonable opinion of Capita is likely to compromise and or impact the processing of the Transactions;
- 15.2.8 A third party on which Capita relies to provide services related to the Payment Services Platform or applicable Payment Application terminates or suspends its service to Capita;
- 15.2.9 Customer fails to comply with any instruction, notice and or request from Capita in relation to the use and or display of any Intellectual Property, including but not limited to any trademark and or logo of the Capita or any of its Affiliates or the Payment Services Platform or any Payment Application; or
- 15.2.10 any event occurs in relation to Customer which in Capita's reasonable opinion could damage Capita's or its Affiliates' reputation, prove detrimental to Capita's or any of its Affiliates' business or may give rise to fraud, suspicion of fraud or any other criminal activity.
- 15.3 Capita may at any time terminate the Payment Services Platform at its convenience by giving Customer not less than 30 days' notice in writing, which termination shall be effective on the date specified in the notice of termination. In the event of termination by Capita in accordance with this Section 15.3, Capita shall reimburse to Customer any sums paid to Capita by Customer in advance for the unexpired portion of the Term following the date of termination.
- 15.4 The rights to terminate the Payment Services Platform given by this Section shall be without prejudice to any other right or remedy of Capita.
- 15.5 **Consequences of Termination.**
- 15.5.1 On termination, or part termination under clause 15.1, of the Product Order for any reason each Party shall cease to make use of the Intellectual Property belonging to the other Party and Customer shall remove all references to Capita from its website or any other promotional material.
- 15.5.2 Termination of the Product Order shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication

intended to come into or continue in force on or after the date of such termination.

- 15.5.3 In the event of termination of the Agreement for any reason other than termination by Customer for cause pursuant to clause 11.1.3 of the Master Terms, the balance of Charges due in respect of any unexpired portion of the Initial Term or any subsequent renewal period (as described in the applicable Product Order) shall immediately fall due and payable. Customer shall pay such amounts to Capita on receipt of a valid invoice from Capita.

**16. ADDITIONAL LIMITATIONS OF LIABILITY.**

16.1 Customer acknowledges and agrees that:

16.1.1 Any action against Capita must be brought within 12 months after the cause of action arises.

16.1.2 Capita does not accept any responsibility for the accuracy of Transaction Data and hereby disclaims all liability to Customer or any third party for any inaccuracies or misrepresentations contained in the Transaction Data.

16.2 Capita does not give any representation or warranty that the Payment Services Platform or the Payment Applications will alert Customer to, avert or prevent occurrences of fraudulent use of Cards or E-Money Accounts and other transaction methods and Customer acknowledges that it should obtain insurance against such fraudulent behavior.

16.3 Any typographical, clerical or other error or omission in any promotional material or other information issued by Capita (including information on the Merchant

Portal and on the Web Site) shall be subject to correction without any liability on the part of Capita.

16.4 Where Customer has incurred any liability to Capita, whether under the Agreement or otherwise and whether such liability is liquidated or unliquidated, Capita may set off the amount of such liability against any sum that would otherwise be due to Customer under the Agreement.

**17. CONFIDENTIALITY.**

17.1 In addition to the confidentiality obligations contained in the Confidentiality section of the Master Terms, Customer acknowledges and accepts that Capita may:

17.1.1 carry out or commission credit checks on Customer for the purpose of obtaining an indication as to whether Customer is likely to be able to pay the Charges; and

17.1.2 disclose information to the Schemes, E-Money Issuers and or Acquirers as is required in connection with the Transactions and or in relation to Customer, the Customer Sites or the Customer Product.

**18. INTELLECTUAL PROPERTY.**

18.1 Subject to the terms of the Agreement, Capita hereby grants to Customer a limited, revocable, non-transferrable, non-sublicensable and non-exclusive license to display the Capita name, logo or other trademarks that are made available to Customer by Capita and approved by Capita for use by Customer (the "**Capita Trademarks**") on the Customer Site during the Term for the sole and exclusive purpose of informing Customer's Consumers that Customer processes the Consumer's payments using Capita's Products (but reserve the right to end this license earlier at

- any time and for any reason) and only in accordance with any Capita trademark usage guidelines or similar branding policies made available by Capita from time to time. Any such use of a Capita Trademark by Customer must correctly attribute ownership of such mark to Capita. Customer will not alter or modify any Capita Trademarks without Capita's express prior written approval in each instance, will not remove or obscure any Capita Trademarks on or in the Products as delivered to Customer.
- 18.2 Customer hereby grants Capita a worldwide, non-exclusive, royalty-free right and license to use, display and reproduce Customer's name, logo and other trademarks and other Intellectual Property Rights solely in connection with the provision of the Service.
- 18.3 Customer shall immediately notify Capita if there is any claim by a third party that any content supplied by Customer is breach of any third party rights or the Capita Site Content Policy.
- 18.4 Customer acknowledges that failure to comply with the requirements of this Section 18 is a material breach of this Agreement.
- 19. NOTICES AND VARIATION.**
- 19.1 From time to time Capita may modify the Product Terms by giving not less than 30 days' notice in writing to Customer by email and/or by publication on the Capita Web Site or the Merchant Portal. If Customer does not agree with those modifications, Customer should contact Capita as soon as possible and no later than 15 Business Days from the date of the notification. By continuing to use the Payment Services Platform after such notifications take effect, Customer has indicated Customer's acceptance of those modifications.
- 19.2 Capita may give less than 30 days' notice if the modification is as a consequence of legal, regulatory, tax or Scheme changes and or other circumstances reasonably beyond Capita's control.
- 19.3 Customer acknowledges and agrees that Capita may act on email notices or instructions which reasonably appear to originate from Customer or Customer's authorised employees or agents, and that Capita shall have no responsibility for, and hereby disclaims all liability with respect to, any claim that such notices or instructions did not originate from Customer or its authorised employees or agents.
- 19.4 For the purposes of this Section 19, "notice" shall include any request, demand, instruction, communication or other document.
- 20. ACQUIRER MERCHANT CONTRACT.**
- 20.1 The acquisition services offered by the Acquirer are subject to a separate contract. Nothing in the Agreement shall purport to limit the ability of the Acquirer to terminate the Acquirer's Merchant Contract and or vary any terms that apply therein.
- 20.2 Capita is not authorised to vary the terms or conditions contained in an Acquirer's Merchant Contract.
- 20.3 Customer acknowledges and agrees that Capita may not process Transactions unless Customer has a valid and current Merchant Contract.
- 20.4 Customer will also pay the Acquirer for the acquiring services received by Customer under the Merchant Contract. Details of these fees and charges are contained in the Merchant Contract and do not form part of the Agreement.
- 20.5 Any changes to the Acquirer are subject to the prior written consent by Capita such consent may include a variation and or increase in the Charges for the Payment

- Services Platform and/or any Payment Applications.
- 20.6 Customer acknowledges that changes to Customer's Acquirer may result in an interruption to, suspension of and or termination of the Payment Services Platform and/or Payment Applications.
- 21. ACCEPTANCE & AUTHORISATION.**
- 21.1 If so offered by a Consumer, Capita will accept for processing a Card or other payment which Capita is authorised to accept. Acceptance for processing and on-line authorisation of the Transaction does not guarantee payment by the Consumer or otherwise.
- 21.2 Acceptance of a Transaction by Capita shall in no way either directly or indirectly prove or be deemed to prove the validity of any Transaction or Transaction receipts. Capita provides Customer no assurances that any Transaction will be honored or that Capita shall not exercise any Chargebacks or other rights of reduction or set-off under the Agreement even where such Transaction has been authorised.
- 22. THIRD PARTY SERVICE INTEGRATIONS.**
- 22.1 From time to time the Parties may agree Customer may submit Transactions and or/other data to Capita via a third party application that has completed a successful integration to the Payment Services Platform, including but not limited to mobile applications ("**Third Party Data Services**"). All Third Party Data Services shall be considered Third Party Services (as defined in the Master Terms) under the Agreement. Any Charges associated with the Third Party Data Service shall be as specified in the Product Order or as notified to Customer in writing by Capita from time to time.
- 22.2 Customer hereby expressly authorises Capita to disclose information including but
- not limited to Transaction Data and or Confidential Information as is reasonably required for in relation to the Third Party Data Service. Customer acknowledges and agrees that Capita may conclusively treat any communication from the Third Party Data Service in relation to the operation and use of the Third Party Data Service integration as though it has been issued by Customer. Notwithstanding the foregoing, without limitation of Capita's rights under the Master Terms, Capita will not be required to disclose any Transaction Data or other data, and Capita shall be entitled to suspend and/or terminate an integration with a Third Party Data Services or decline to accept or submit Transactions, Transaction Data or any other data, to the Third Party Data Service in the event that Capita reasonably determines that the Third Party Data Services or such submission or data or Transactions (a) is not in compliance with any PCI-DSS requirements, Scheme Rules or applicable laws, regulations, licensing obligations, restrictions and orders, or (b) poses a security or confidentiality risk to Capita's, or its other customers', systems, data or Intellectual Property Rights; provided, however, that Capita shall be under no obligation to affirmatively make any such determination and Customer shall be solely and exclusively responsible for selecting, reviewing and managing the Third Party Data Services. Termination or suspension of the Third Party Data Service for any reason shall not terminate or otherwise affect the Agreement.
- 22.3 Capita is not responsible for, and hereby expressly disclaims all liability for, any claims, errors or omissions arising from or in connection with and or the performance of any such Third Party Data Service and or the maintenance of and or performance of any Third Party Data Service.

**23. PROCESSING VOLUMES.**

23.1 Customer acknowledges the Charges offered by Capita reflect the volumes of Transactions to be submitted by Customer. For the duration of this Agreement, Customer agrees either that:

23.1.1 Capita shall be Customer's exclusive online card payment service provider ("**Sole Service Provider**"); or

23.1.2 where agreed by the Parties and identified in the Product Order, Customer shall comply with any Minimum Transaction Processing Commitment specified in the Product Order.

23.2 If the Minimum Transaction Processing Commitment is not achieved Customer agrees to pay the difference between Charges due in relation to the actual Transactions (excluding any Transactions that fail or are not accepted for any reason) processed during the relevant period and the Charges that would have been payable had the Minimum Transaction Processing Commitment been achieved.

23.3 Customer further agrees that, during this Agreement, where Capita is the Sole Service Provider Customer shall not use the services of any third party to process any Transactions or provide services or functionality similar to the Products and Services referred to in these Product Terms without the prior written consent of Capita.

23.4 If Capita is to be the Sole Service Provider and, prior to the Effective Date, Customer processes Transactions or uses products or services of an alternative payment service provider ("**Alternative Service Provider**") which directly or indirectly competes with the Products and Services provided by Capita, Customer agrees to serve notice of termination on the Alternative Service

Provider as soon as the contract with the Alternative Service Provider allows, unless Capita has agreed otherwise and Capita has provided its prior written consent.

**24. PROMOTIONAL ACTIVITY.**

24.1 Customer agrees to participate in the promotional and marketing activity ("**Promotional Activity**") as specified in the Product Order, together with such other Promotional Activity as the Parties may agree from time to time.

24.2 Except as expressly provided under the Agreement, Capita shall not make any press announcements or publicise the Agreement or its contents or the relationship between the Parties in any way without the prior written consent of Customer, which shall not be unreasonably withheld or delayed.

24.3 Capita agrees that the text and layout of any promotional and or marketing materials will be provided to Customer for Customer's consent prior to publication, such consent not to be unreasonably withheld or delayed.

24.4 For the purpose of the promotional activity and any other activity that may be agreed between the Parties from time to time, Customer hereby grant Capita a, non-exclusive, royalty-free right and license to use, display and reproduce Customer's trademarks and other Intellectual Property Rights solely in connection with the provision of such activities. Capita agrees to adhere to Customer's reasonable usage guidelines, as notified in writing by Customer to Capita from time to time in advance.

24.5 The Parties shall co-operate in issuing such press releases and similar media statements respecting the Payment Services Platform, Payment Applications and other Products and Services offered under the Agreement as either Party may deem reasonably appropriate from time to time.

- 24.6 Each Party shall have the right to inform their customers and the public regarding the existence of, but not the terms of, the Agreement.
- 24.7 Each Party may use the other's name in marketing their respective products and services and may link to each other's websites, but neither Party will perform any actions that will harm the other's or its customers' name and reputation.
- 24.8 The Parties may participate in joint marketing and joint advertising initiatives with the prior written consent, such consent not to be unreasonably withheld or delayed.
- 25. PROHIBITED JURISDICTIONS – GAMING MERCHANTS.**
- This Section 25 shall apply only in the event that Customer is a gaming merchant or otherwise conducting business involving betting as classified by its Merchant Classification Code or otherwise pursuant to its Merchant Contract.
- 25.1 Customer acknowledges that Capita may at its sole discretion decline to process Transactions originating from gambling or any other prohibited service, including but not limited to Transactions originating from cardholders and or activities located in or deemed to be located in the Prohibited Jurisdictions as specified in this Section 25.
- 25.2 Capita reserves the right as the consequence of legal, regulatory and or Scheme advice received by Capita and at its sole discretion to amend the Prohibited Jurisdictions by notification to Customer in writing from time to time.
- 25.3 Subject to legal, Scheme and or regulatory restrictions, Capita shall use commercially reasonable efforts to provide Customer with not less than 30 days' notice in writing of any such changes under this Section 24. However, Customer acknowledges that immediate changes to the list of Prohibited Jurisdiction may be required from time to time as a consequences of changes in legal interpretation, laws and or regulations.
- 25.4 For clarity, Customer acknowledges and agrees that nothing in the Agreement will require Capita process any Transaction which is not in accordance with relevant laws, regulations, regulatory requirements and/or Scheme Rules.
- 25.5 For the purpose of these Payment Application-Specific Additional Terms, "***Prohibited Jurisdictions***" shall mean:
- 25.5.1 China
  - 25.5.2 Hong Kong
  - 25.5.3 Israel
  - 25.5.4 Malaysia
  - 25.5.5 Singapore
  - 25.5.6 Turkey
- As the same may be amended by Capita under this *Section 25*.
- 26. MERCHANT ADMINISTRATOR TERMS AND CONDITIONS.**
- This Section 26 shall apply only in the event that a Merchant Administrator for Customer is specified in the applicable Product Order.
- 26.1 **Appointment of Merchant's Administrator.**
- 26.1.1 For the purpose of this Section 26 the following definitions will apply:
- "Ancillary Service Agreement"** means the agreement between Merchant Administrator and Customer for services as provided to and approved by Capita.
- "Merchant Administrator"** means the person or organisation specified as the Merchant Administrator in the Product Orders.
- 26.1.2 Customer hereby appoints the Merchant Administrator as its

- billing administrator for the purpose of the administration and operation of the Payment Services Platform and if specified in the Ancillary Services Agreement to provide the technical and physical interface as a service provider for Customer with Capita, and Customer has ensured that Merchant Administrator hereby accepts the appointment on those terms.
- 26.1.3 Customer shall not, during the Term, appoint any other person, firm or company as its Merchant Administrator without the prior written consent of Capita.
- 26.1.4 For the purpose of the administration of the Agreement:
- (a) Capita is instructed and authorised by Customer to provide information and instruction relating to the Agreement and payment processing to Merchant Administrator;
  - (b) Merchant Administrator is instructed and authorised by Customer to provide information and instruction relating to the Agreement and payment processing to Capita.
  - (c) Merchant Administrator is instructed to perform the functions specified in the Agreement and Capita is hereby notified of Customer's request for Merchant Administrator to perform these functions as Customer's merchant administrator.
- 26.1.5 Customer shall notify Capita in writing of any variation and or termination of its appointment of Merchant Administrator as its merchant administrator to the extent any such variation or termination impacts the administration of the Agreement.
- 26.1.6 Termination of the Ancillary Service Agreement or appointment by Customer of a Merchant Administrator shall not terminate the Agreement except as expressly set forth herein.
- 26.2 **Warranties in respect of Merchant Administrator.**
- 26.2.1 Customer hereby represents, warrants and covenants that:
- (a) All merchant Identifications (MIDs) provided to Capita via Merchant Administrator are assigned to Customer by an Acquirer;
  - (b) All Transactions submitted to Capita by Customer originate from goods or services provided by Customer and or Merchant Administrator as a service provider for Customer.
- 26.3 **Invoicing via Merchant Administrator.**
- 26.3.1 Customer appoints Merchant Administrator to administer the payment of Charges payable by Customer to Capita under this Agreement shall be varied as set out in this Section 26.
- 26.3.2 Customer agrees that Capita will at the sole discretion of Capita issue

- invoices for all Charges, fees and payment due under the Agreement to:
- (a) Merchant Administrator;
  - (b) If so notified by Capita, to such other legal entity may be agreed in writing by the Parties from time to time; or
  - (c) If no Merchant Administrator is appointed by Customer any invoice will be provided directly to Customer.
- 26.3.3 Capita will for the duration of the Merchant Administrator appointment issue its invoices under the Agreement (including value added tax invoices where applicable) to Merchant Administrator and shall not be obliged to provide invoices directly to Customer. Customer may obtain information on the number of Transactions processed via the Merchant Portal.
- 26.3.4 Customer acknowledges that Customer has entered into an agreement for ancillary services with Merchant Administrator and that the Charges due under the Agreement per Transaction may be incorporated into invoices issued to Customer by Merchant Administrator and included in the generic transaction payment description. Merchant Administrator shall not be required to provide Customer with a separate invoice for Charges due under the Agreement.
- 26.3.5 Capita acknowledges that receipt from Merchant Administrator of payment of the Charges due under the Agreement shall discharge Customer's liability in respect thereof.
- 26.3.6 If Customer terminates its Ancillary Service Agreement Capita shall be entitled to terminate the Agreement or may at Capita's sole discretion elect to bill Customer direct and apply the Charges specified in the Product Order.
- 26.3.7 If the Capita terminates its agreement with Merchant Administrator, Capita may at Capita's sole discretion elect to bill Customer direct and apply the Charges specified in the Product Order or appoint a replacement Merchant Administrator. Capita agrees to use reasonable efforts to provide Customer with notice of any such termination.
- 26.3.8 Customer's obligation to pay Capita direct and or to pay any new Merchant Administrator shall not apply until notice has been given in writing to Customer in accordance with the terms of the Agreement.
- 26.3.9 Customer agrees that information in relation to the Services under the Agreement may be disclosed to Merchant Administrator.
- 26.3.10 Customer acknowledges that Capita is not responsible in any way, and hereby disclaims all liability, for the performance of and or obligations contained in the Ancillary Service Agreement.
- 26.3.11 The Parties agree that Merchant Administrator is not authorised to vary and or amend any of the terms in the Agreement.



**27. MERCHANT NOTIFICATION PROCESS.**

This Section 27 shall apply only in the event that Merchant Notification Service has been elected by Customer as specified in the applicable Product Order.

27.1 Any alterations to the Service that require notification to the Nominated Merchant Contact under the Agreement will be notified to Customer via the Merchant Portal and via the Merchant Notification Process.

27.2 For the purpose of this Section, the following definitions shall apply:

**“Merchant Notification Process”** means the procedure for providing notification to Customer as specified in the Product Order; and

**“Nominated Merchant Contact”**: the person and or persons identified as the Nominated Merchant Contact for the Merchant Notification Process in the Product Order.

**28. TOKENISATION SERVICE.**

28.1 Capita will from the Tokenisation Commencement Date hold the Transaction Data, which includes but is not limited to Cardholder Data, for the duration of the Tokenisation Service. From time to time Customer may request Capita to process a Transaction relating to Cardholder Data held by Capita as part of the Token Service.

28.2 Upon receipt of the request from Customer, Capita will, provide Customer will a unique Token ID in relation to the Transaction with the Cardholder.

28.3 The provision of the Tokenisation Service will be subject to:

28.3.1 The terms of the Agreement;

28.3.2 The payment by Customer of the Charges due under this Agreement;

28.3.3 Applicable laws, PCI-DSS, Scheme Rules, operational and processing requirements; and

28.3.4 Customer obtaining the appropriate Cardholder consent for Capita to hold the Cardholder’s Transaction Data to enable Customer to debit the Cardholder for Transactions for the duration of the Tokenisation Services.

28.4 In providing the Token ID, Capita will hold any Cardholder Transaction Data in accordance with Capita’s PCI-DSS accreditation, applicable laws and Scheme Rules and will not disclose the Cardholder’s Transaction Data held for the Tokenisation Service to Customer.

28.5 Customer shall indemnify and keep indemnified Capita against all and or any claims made against Capita arising from holding Cardholder Transaction Data for the Tokenisation Service including but not limited to any claim by the Cardholder that:

28.5.1 Capita is not authorised to hold the Cardholder Transaction Data for the purpose of the Tokenisation Service; or

28.5.2 Customer is not authorised by the Cardholder to process the Transaction.

**29. DATA PROTECTION.**

29.1 In this Section 29, 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.
- 29.2 Capita acts as a data processor on behalf of Customer with respect to any personal data (including the Personal Information) which is processed by Capita on behalf of Customer or a Customer Affiliate (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 Section 29 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.
- 29.3 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.
- 29.4 **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:
- 29.4.1 process the Customer Personal Data only in accordance with the Agreement and with other mutually agreed and documented instructions of Customer;
  - 29.4.2 implement appropriate technical and organisational measures necessary to meet the requirements of Article 32 of the GDPR;
  - 29.4.3 ensure Capita staff authorised to process Customer Personal Data are subject to appropriate confidentiality obligations;
  - 29.4.4 be entitled to engage subprocessors to process Customer Personal Data (and this Section 29.4.4 shall be deemed Customer’s general written authorisation to the same). Capita shall: (a) ensure that equivalent requirements to those set out in this Section 29.4 are imposed on any subprocessor(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 subprocessors.
- 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;
- 29.4.5 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. Capita shall be entitled to charge Customer, at Capita's then-current rate card and expenses policy, for any Capita effort or costs under this Section 29.4.5;

29.4.6 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 Section 29. 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

29.4.7 notify Customer without undue delay after becoming aware of any personal data breach involving Customer Personal Data.

29.5 **International transfers.** Customer acknowledges that it may be necessary for Capita or its subprocessors to transfer

Customer Personal Data outside the UK or the European Economic Area (EEA) in order to provide certain services under the Agreement. Customer authorises Capita and in turn its applicable subprocessor to carry out cross-border data transfers of Customer Personal Data to countries or territories outside the UK or the European Economic Area (EEA) solely as required for the provision of the services under the Agreement. Any transfers hereby authorised in accordance with this Section 29.5 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 subprocessor 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.

29.6 **Indemnity.** 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. 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 Section 29.3(b) or Section 29.3(c).

**ANNEX 1**

**PERSONAL DATA AND PROCESSING ACTIVITY**

Subject matter of the processing	Transactional Payment Processing
Duration of the processing	Transaction processing is transient at the point of time of the transaction but our policy is to retain the transaction data to support international payment card scheme defined chargeback timescales, or, if card on file is requested by a cardholder via a merchant or organisation, for the duration of the validity of the card. The duration of the processing is therefore for the duration of the agreement plus the chargeback period for individual transactions. This would mean, for example, that if there was a transaction on the final day of an agreement that transaction date would be retained for the duration of the chargeback period.
Nature and purpose of the processing	The nature and purpose of the processing is to enable data subjects to make payments for goods and services by facilitating the payment processes between the data subject, the relevant merchant or organisation providing the goods or services and the associated components of the wider financial system including acquirers, banks and schemes.
Type of personal data	Personal data to support the payment for goods and services, including name, telephone numbers, email address, address, account details, and payment details associated with the transaction as defined by the merchant, organisation, acquirer, bank or scheme.
Categories of data subjects	Individuals who wish to make payments for goods and services.
Obligations and rights of the Customer	As defined in the terms in this Agreement.

ANNEX 2 – SERVICE CHARTER



## Contents

1. Introduction
2. Software Development & Terminology
3. Getting in Touch
4. Raising a Ticket
5. Response Times & Priority Levels
6. Service Levels
7. Feedback & Escalations

2




## Introduction

Welcome to our Customer Service Charter.


Whether you're new to Pay360, or a long-standing customer, this service charter outlines our promise and commitment to offer both value and efficient customer service to you through helpful, timely and knowledgeable support.

We constantly evaluate ourselves against this charter and strive for continuous improvement. We will publish our performance on an annual basis and welcome feedback and comments from you so that we can develop the charter to ensure that it delivers better outcomes for you and the customers that you serve.



Alan Powell  
Chief Operating Officer

pay360.com ●●● 3



## Software Development

**Software Development Strategy**

There will always be a requirement to continually improve and enhance our products. Part of this can also mean products will reach end-of-life and be decommissioned. These outcomes are recognised as having different drivers, all of which are taken into consideration:

**Business-led:**

- Legislative changes (including safety and security)
- Strategic business decisions
- Technological advances

**Customer-led:**

- Requests from individual customers
- Requests from User Groups



pay360.com ●●● 4

## Terminology

**Terminology Guide**

Our staff are trained locally in our products and in support services. Our support processes follow UK Government approved ITIL4 framework and the appropriate naming conventions in line with those guidelines. In doing so, the language used is very important:

- ! **Incident** - an unplanned interruption to a service or reduction in the quality of the service.
- X **Problem** - the cause or potential cause, of one or more Incidents, for which the underlying cause may not initially be known.
- # **Service Request** - Requests for Training, Consultancy, Report Writing, Technical Services and Standard Changes.
- ? **Enquiry** - Requests for information and any "How do I...?" or "How can I...?" queries.
- # **Change Request** - Request for functionality to be enhanced in the product.
- ↻ **Workaround** - a solution that reduces or eliminates the impact of an incident or problem for which a full resolution is not yet available.

Incidents, Enquiries and Service Requests may at times be referred to as a 'case' or 'ticket'.





## Getting In Touch

You can contact us in a way that suits you best – by raising a case through your dedicated account on the Capita Customer Support Portal, by phone or by contacting your dedicated Service Manager. In the event of a P1/Major Incident, we urge customers to contact us by phone in the first instance.

### Capita Customer Support Portal

Please use your login details to access the portal:  
<https://capitaswprod.service-now.com/>



### Phone

You can reach us by phone on:

**0333 313 7161**



### Pay360 Business Hours

Business Hours Mon – Fri 09:00 to 17:30

In the event of emergencies or service degradation, out of hours support is available evenings, weekends and bank holidays.

5



## Raising a Ticket or Case

When contacting the Service Desk about any issue, you will need to provide as much information as possible including:

- Identify yourself.
- The users, businesses or customer name this is affecting.
- The specific product(s) affected.
- The release version you are on including Service Packs or Hotfixes.
- What impact this is having on your business in real terms e.g. deadlines.
- Environmental issues that may be contributing factors.
- A reference number (if calling about an existing matter).
- As much detail as possible about what you are reporting including:
  - ❖ Error messages (and the steps taken which cause the error message to appear).
  - ❖ Time/date when these errors occur(ed).
  - ❖ If the issue is intermittent or replicable, has this occurred more than once?
  - ❖ Screenshots.
  - ❖ Which environments are affected e.g. Live/Test?

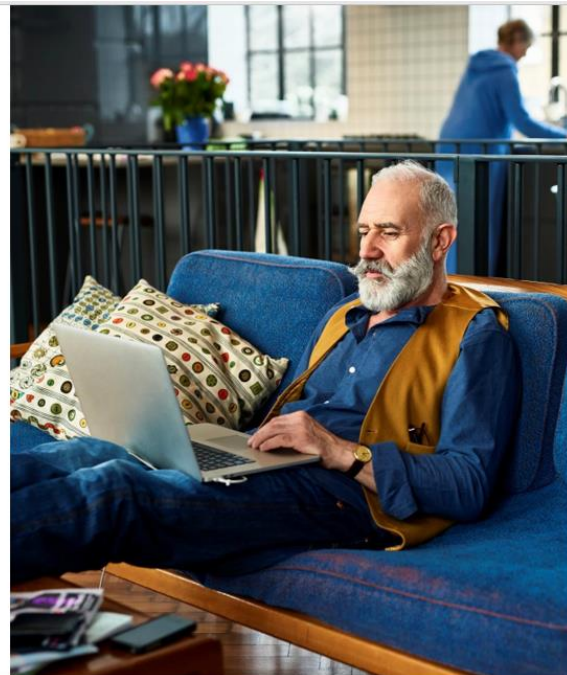
We will always strive to resolve your query immediately, but sometimes a deeper level of investigation is required. The time required to do this will depend on the complexity of the issue and the factors involved. It may be necessary to ask you a few questions in order to establish additional information or even to request a copy of some data for further investigation.

While your case is being investigated, you can expect regular contact, with higher frequency depending on its priority. Changes to a case status may be made in the following circumstances:

- Where you have been asked to provide further information, to test software, or to undertake any other action.
- Where you or a third-party support agency has returned the case to Pay360, the severity will be re-assigned as deemed necessary.
- Where the significance of the fault diminishes, either because of partial fix or elimination of some elements, the case category may be downgraded.

pay360.com ●●●

6



## Resolution Time & Priority Levels

### How we intend to resolve your issues?

#### Software Defects

If we determine that a problem or fault reported by the customer relates to Pay360 software, we will attempt to provide a solution. The solution may take the form of additional corrective software or an updated version of Pay360 software in which the problem has occurred. We will use reasonable endeavours to provide a full resolution when the next version of the relevant Pay360 software is released. Incident resolution may take different forms e.g. advice, workaround or upgrade to later version – regardless of whether this version is released yet.

#### When will you respond to me?

We aim to resolve cases according to their Priority, usually with the most Urgent and Impactful cases being addressed first. The following is the Key Performance Indicator we use to target how quickly we aim to resolve an Incident or escalate it as a problem.

Priority	Target Response Time	Priority	Target Resolution Time*
1	1 hour	1	4 hours
2	2 hours	2	1 working day
3	1 working day	3	5 working days
4	2 working days	4	10 working days

\*Target resolution time excludes delivery of product or software resolution.

### Priority Levels

All case investigations are based on priority levels. Priority 1 being the highest and Priority 4 the lowest. Enquiries and service requests will never be raised above a P3. When logging an incident, you will have the option of setting the priority. Once set, a revision of this rating may take place depending on changing impact or urgency. We aim to always keep you informed of this. We ask that our customers use the below guides in setting priorities.

Priority Level	Examples
<b>Priority 1 – System Down</b>	A service interruption which has a critical impact on the activities of the authority; causes significant financial loss and/or disruption to the authority or results in any material loss or corruption of authority data.
<b>Priority 2 – Critical</b>	A service interruption which can or could have a major (but not critical) adverse impact on the activities of the authority and no workaround is available.
<b>Priority 3 – Major</b>	A service interruption which has a major adverse impact on the activities of the authority which can be reduced to a moderate adverse impact due to the availability of a workaround.
<b>Priority 4 - Low</b>	Service or change request

## Service Levels

### Availability

Monthly Availability Target = 99.9%



% availability of each managed service component is calculated as follows:

$$\frac{\text{Total Agreed Availability Hours} - \text{Unscheduled Outage Hours}}{\text{Total Agreed Availability Hours}} \times 100$$

### Notes

Total Agreed On-line Availability Hours is defined as 7 days by 24 hours minus any agreed scheduled maintenance periods.

Service outages caused by other service providers are excluded from this target e.g. loss of internet connection and other telecoms failures and links to 3rd parties.

### Alerts

We intensively monitor our service 24\*7 with real-time alerting of any problems with the service.

If a service-affecting issue is identified during business hours, a service notification email will be sent out to your list of company contacts, advising of the issue and any subsequent updates pertaining to the issue. It is important that you supply and keep us updated with a list of contacts – you can do this by contacting the Service Desk.

### Notifications

At Pay360, we aim to provide our customers with accurate information, advice and guidance regarding service and product related changes under the form of notifications.

These may be:

- New releases, software upgrades or weekly maintenance related work;
- 2-4 weeks' notice on changes that may impact your integration and require you to operate specific changes on your systems;
- Scheme, Vendor or Acquirer changes that may impact you;
- New products or changes to existing Pay360 products.

### Scheduled Maintenance

As we are continually improving our service, we have scheduled a regular maintenance window to ensure any scheduled upgrades or infrastructure changes take place at a time you can expect and prepare for.

Whilst we strive to minimise any impact to clients during this time, please be prepared for potential intermittency while system changes are implemented.

If we need to make urgent changes, for example related to security or performance, outside of this window which we feel may impact your service, we will notify you as soon as possible, and aim to provide 48 hours' notice wherever possible.

\* Whenever deemed necessary, we may decide to start the maintenance window 1 hour earlier to avoid any foreseen disruption to Pay360 merchants.



## Disaster Recovery

### Disaster Recovery

A disaster is a situation which causes, or is anticipated to cause, the loss of availability of the Service for a protracted period, considered to be at least 24 hours. In the event of a disaster, Capita Pay360 shall:

- Recover data stored off site;
- Recover the service at the nominated disaster recovery site;
- Procure and implement, at the expense of Capita Pay360, other equipment necessary to supply the service;
- Aim to, where possible, provide a minimum service within 24 hours;
- Provide a fully functional system as soon as is logistically possible.
- Targets for the restoration of the Service do not apply in the event of a customer site disaster such as loss of equipment or premises.

### Site Locations

Pay360's primary and recovery sites are both located in the United Kingdom, within a 40-mile radius of a Pay360 office.

### Datacentre Failover

As part of our ongoing business continuity planning, Pay360 undertakes periodic failovers between its two data centres. These are intended to confirm that our procedures are up-to-date, and all teams involved are well equipped to follow and implement them. We will aim to provide you with 4 weeks' notice prior to a datacentre failover.

### Recovery Point Objective (RPO)

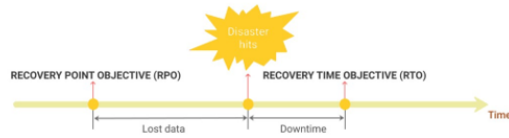
An RPO is a measurement of time from the failure, disaster or comparable loss-causing event. RPOs measure back in time to when your data was preserved in a usable format, usually to the most recent backup. Recovery processing usually preserves any data changes made before the disaster or failure. RPOs can also refer to how much data can be lost before your enterprise receives significant harm, also known as your enterprise's loss tolerance.

### Recovery Time Objective (RTO)

RTOs represent the amount of time an application can be down and not result in significant damage to a business and the time that it takes for the system to go from loss to recovery. This recovery process includes the steps that Pay360 must take to return the application and its data to its pre-disaster state.

### Pay360 Targets

RPO = 5 seconds  
RTO = 2 hours



### At Pay360 we welcome customer feedback.

If you have been dissatisfied with our service or products, or have cause to contact us to escalate any matters, we wish to assure you of the following commitments:

- We will acknowledge your feedback promptly.
- For issues that are more complex or require investigation, we will keep you informed of our progress.
- We will endeavour to provide a final response as quickly as possible for the majority of the issues. Some software issues of particularly complex nature may require systems development. If this applies, we will advise you of this.

### Escalation contact details.

If you find that the service is not meeting the standard set out within this document, you should contact:

Position	Name	Phone	E-mail
Support Team	Pay360 Helpdesk	0333 313 7161	<a href="mailto:simon.campbell@capita.co.uk">simon.campbell@capita.co.uk</a>
Head of Customer Experience	Conor McMenamin	0780 950 4762	<a href="mailto:conor.mcmenamin@capita.co.uk">conor.mcmenamin@capita.co.uk</a>
Chief Operational Officer	Alan Powell	0784 151 2569	<a href="mailto:alan.powell@capita.co.uk">alan.powell@capita.co.uk</a>

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS (UK) – E-MAIL PAY**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the E-mail Pay Product as indicated in the applicable Product Order. The E-mail Pay Product is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the E-mail Pay Product consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. CUSTOMER OBLIGATIONS.**

1.1 In addition to Customer's obligations under the Agreement, with respect to the E-mail Pay Product, Customer is responsible for:

1.1.1 Generating and distributing the unique and customised link for a pre-configured amount;

1.1.2 monitoring the responses to any e-mail or other distribution channel sent via the E-mail Pay Product;

1.1.3 reconciling the payment by the Consumer is consistent with the payment requested by the E-mail Pay Product e-mail.

1.2 In placing the link into an email Customer acknowledges that the e-mail communication to the Consumer may not be secure and Customer remains responsible for the content and security of the communication.

**2. CAPITA OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the E-mail Pay Product, Capita is responsible for providing the hosted payment page accessed via the link in accordance with the terms of the Agreement.

2.2 Notwithstanding anything to the contrary, Capita is not responsible or liable for:

2.2.1 the security of and or content of the e-mail sent to the Consumer;

2.2.2 the receipt of the e-mail by the Consumer; or

2.2.3 the rejection of or blocking of any e-mail by a Consumer and the Consumer's computer software, internet service provider and or systems.

**3. SERVICE INTEGRITY.**

3.1 Customer shall notify Capita immediately it becomes aware of any attempts by any third party to:

3.1.1 Access the hosted page via the link without the prior authority of Customer:

3.1.2 Replicate in any way the look and or design of the e-mail with the intention of misleading a Consumer into believing the Consumer is accessing a Capita hosted payment page.

3.2 Customer shall take all reasonable steps to notify its Consumer's if it is aware of any event referred to in this Section 3 of these Payment Application-Specific Additional Terms and shall cease using the E-mail Pay Product.

3.3 If Capita receives a notification from Customer in accordance with this Section 3,

or otherwise receives notification of the occurrence of any events described herein, Capita may at its sole discretion, terminate or suspend the E-mail Pay Product. Capita shall use commercially reasonable efforts to discuss such action with Customer but may from time to time for reasons of security and to protect the integrity of the E-mail Pay Product act without notice to Customer.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS (UK) – CARDLOCK SERVICE**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the CardLock Service Product as indicated in the applicable Product Order. The CardLock Service Product is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the CardLock Service Product consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. DEFINITIONS.**

1.1 Capitalised terms used in these Payment Application-Specific Additional Terms but not defined below are defined in the Product Terms and/or Master Terms.

*“CardLock Service”* means the Product provided by Capita to enable Transaction Data (including but not limited to Card numbers) to be held by Capita and accessed when the Cardholder authorises to Customer to submit a Transaction.

*“Token ID”* means a unique identification marker issued to Customer by Capita in relation to a Cardholder’s Transaction Data held by Capita as part of a Tokenisation Service;

*“Tokenisation Service”* means the holding by Capita of the Cardholder’s Transaction Data to be used for repeat Transactions and the issuance to a merchant of a Token ID.

*“Tokenisation Commencement Date”* means the date from which Capita shall hold Cardholder Data for the purpose of use in the Tokenisation Service as specified in the Product Order and if no date is specified the Effective Date.

**2. TOKENISATION SERVICE.**

2.1 Capita will from the Tokenisation Commencement Date hold the Transaction Data, which includes but is not limited to Cardholder Data, for the duration of the

Tokenisation Service. From time to time Customer may request Capita to process a Transaction relating to Cardholder Data held by Capita as part of the Token Service.

2.2 Upon receipt of the request from Customer, Capita will, provide Customer will a unique Token ID in relation to the Transaction with the Cardholder.

2.3 The provision of the Tokenisation Service will be subject to:

2.3.1 The terms of the Agreement;

2.3.2 The payment by Customer of the Charges due under this Agreement;

2.3.3 Applicable laws, PCI-DSS, Scheme Rules, operational and processing requirements; and

2.3.4 Customer obtaining the appropriate Cardholder consent for Capita to hold the Cardholder’s Transaction Data to enable Customer to debit the Cardholder for Transactions for the duration of the Tokenisation Services.

2.4 In providing the Token ID, Capita will hold any Cardholder Transaction Data in accordance with Capita’s PCI-DSS accreditation, applicable laws and Scheme Rules and will not disclose the Cardholder’s Transaction Data held for the Tokenisation Service to Customer.

2.5 Customer shall indemnify and keep indemnified Capita against all and or any claims made against Capita arising from holding Cardholder Transaction Data for the Tokenisation Service including but not limited to any claim by the Cardholder that:

2.5.1 Capita is not authorised to hold the Cardholder Transaction Data for the purpose of the Tokenisation Service; or

2.5.2 Customer is not authorised by the Cardholder to process the Transaction.

**3. CUSTOMER OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the CardLock Service Product, Customer shall be responsible for:

3.1.1 Ensuring the CardLock Service Product is suitable for Customer's business requirements; and

3.1.2 Integration to the CardLock Service Product; and

3.1.3 PCI reporting and audit's associated with Customer's own business; and

3.1.4 Ensuring the Capita Trademark is displayed in relation to Customer's use of the CardLock Service Product; and

3.1.5 Obtaining any Cardholder consents required in relation to the CardLock Service Product.

## PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS (UK) – OPTIMIZE SERVICE

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Optimize Service Product (including its individual components and modules) as indicated in the applicable Product Order. The Optimize Service Product is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the Optimize Service Product consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

### 1. DEFINITIONS.

1.1 Capitalised terms used in these Payment Application-Specific Additional Terms but not defined below are defined in the Product Terms and/or Master Terms.

**"Optimize Commencement Date"** means the date from which Capita shall hold Cardholder Data for the purpose of use in the Optimize Service Product as specified in the Product Order and if no date is specified the Effective Date.

**"Optimize Evaluate"** means the Optimize Service Product module that provides an engine to create user defined automated rules for a number of use cases including fraud detection, risk management and anti-money laundering. Where Optimize Evaluate is licensed by Customer per the Product Order, the Parties will agree the actual fixed number of rules to be created for Optimize Evaluate as part of the discovery process.

**"Optimize Investigate"** means the Optimize Service Product module designed to radically improve an operator's fraud and risk management team efficiency and throughput in reviewing and identifying potential and real fraud using various tools including link analysis.

**"Optimize Manage"** means the Optimize Service Product module that provides an automated queue workflow management system designed to enable distributed tasks

across designated teams to streamline operational efficiency and rapidly resolve tasks.

**"Optimize Verify"** means the API designed to allow clients to access multiple third party data vendors whose data assets can be used within customer workflows or as part of the decision-making process within Optimize Evaluate. Where Optimize Verify is licensed by Customer per the Product Order, Customer can choose which data vendors makes most sense to their unique strategy without having the inconvenience and cost of individual integrations and leverage Capita's consolidated volume rates made available to customers to reduce the costs from the third party suppliers which alone they may not be able to achieve.

### 2. OPTIMIZE SERVICE.

2.1 Subject to the terms of the Agreement, Capita will provide Customer with access to the Optimize Service for Customer to use in accordance with the Optimize Manual as the same is amended from time to time and published on the Merchant Portal or otherwise provided to the Customer.

2.2 Capita will from the Optimize Commencement Date hold the Transaction Data for the duration needed to enable a decision based on the rules defined by the customer and then for the period defined by Customer as necessary to enable Customer to maintain the appropriate records of

- decisions for audit purposes. This is typically for the duration of the Term applicable to the Optimize Service Product as indicated in the Product Order unless the Customer directs otherwise.
- 2.3 Upon receipt of the request from Customer, Capita will provide Customer with a decision result based upon the rules defined and managed by Customer as further described in the Optimize Manual.
- 2.4 The provision of the Optimize Service Product will be subject to:
- 2.4.1 The terms of the Agreement;
  - 2.4.2 The payment by Customer of the Charges due under the Agreement;
  - 2.4.3 Applicable laws, PCI-DSS, Scheme Rules, operational and processing requirements; and
  - 2.4.4 Customer obtaining the appropriate Cardholder consent for Capita to hold the Cardholder's Transaction Data to enable Customer to make decisions about a Cardholder's transaction.
- 2.5 In providing the Optimize Service, where Capita holds any Cardholder Transaction Data, it will do so in accordance with Capita's PCI-DSS accreditation, applicable laws and Scheme Rules and will not disclose the Cardholder's Transaction Data held for the Optimize Service Product to Customer.
- 2.6 Capita will use the applicable Customer-submitted data as part of the decision-making process within Optimize Evaluate as further described in the Optimize Manual.
- 2.7 Customer shall indemnify and keep indemnified Capita against all and or any claims made against Capita arising from holding Cardholder Transaction Data for the Optimize Service Product including but not limited to any claim by the Cardholder that:
- 2.7.1 Capita is not authorised to hold the Cardholder Transaction Data for the purpose of the Optimize Service Product;
  - 2.7.2 Customer is not authorised by the Cardholder to process the Transaction;
  - 2.7.3 Customer has rejected or declined Transactions using Optimize Evaluate in error;
  - 2.7.4 Customer has accepted transactions using Optimize Evaluate in error; or
  - 2.7.5 Customer is not authorised to access any third party data sources accessible via the Optimize Verify Product.

**3. CUSTOMER OBLIGATIONS.**

- 3.1 In addition to Customer's obligations under the Agreement, with respect to the Optimize Service Product, Customer shall be responsible for:
- 3.1.1 Ensuring the Optimize Service Product is suitable for Customer's business requirements;
  - 3.1.2 Managing access to the system and all Optimize service portals;
  - 3.1.3 Managing and creating rules in accordance with the Optimize Manual;
  - 3.1.4 Managing and creating of lists for Customer determined business objectives;

- 3.1.5 Ongoing monitoring of rules and effectiveness;
- 3.1.6 Ongoing monitoring of any deferred transactions within the system;
- 3.1.7 Integration to the Optimize Service Product via the Payment Services Platform API made available by Capita;
- 3.1.8 Integration to the Optimize Service Product via the API made available by Capita;
- 3.1.9 Maintaining third party contracts and payments directly with third party vendors when not contracted directly via Capita as expressly approved by Capita;
- 3.1.10 Management of its own policies to inform Cardholders of how their data is used;
- 3.1.11 Complying with any data laws, rules and regulations related to third party data source usage;
- 3.1.12 PCI reporting and audit's associated with Customer's own business;
- 3.1.13 Obtaining any Cardholder consents required in relation to the Optimize Service Product; and
- 3.1.14 Ensuring that its staff are properly trained around case investigation.

**4. CHANGES.**

- 4.1 In the event of a change in circumstances affecting the provision of the Optimize Service Products (including any legislative, regulatory or other change affecting the payment processing industry and/or any revised policies, guidelines or regulations issued by a Scheme direct to Customer or via the Acquirer or E-Money Issuer), Capita reserves the right at its option to make such alterations to the Optimize Service Products it deems reasonably necessary from time to time provided that such alterations do not have a material adverse effect on the functionality of the Optimize Service Products. Any alterations to the Optimize Service Products that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

- 5.1 Customer shall undertake all necessary due diligence around any rules implemented ahead of implementing them.

**6. DATA PROTECTION.**

- 6.1 Details of the applicable processing activities for the Optimize Service Product (including categories of personal data and data subjects) are described in Annex 1 to these Product Terms.



**ANNEX 1**

**PERSONAL DATA AND PROCESSING ACTIVITY (OPTIMIZE SERVICE)**

Subject matter of the processing	Fraud management for payment transactions
Duration of the processing	The nature of the transaction fraud assessment process is that it is transitory in relation to each transaction assessed but the underlying transaction data is retained to support the requirements of international card scheme chargeback processes.
Nature and purpose of the processing	The nature and purpose of the processing is to enable the payment transaction to be assessed by the appropriate organisation in order to determine the likelihood that it is fraudulent based on a set of rules that are determined by that organisation.
Type of personal data	The personal data is that required to support the payment transaction and other information that may be available in order to enable judgements to be made concerning the likelihood that the transaction is fraudulent.
Categories of data subjects	Customer's customers, including without limitation, individuals who wish to make payments for goods and services, or individuals or entities applying for Customer account verifications.
Obligations and rights of the Customer	As defined in the terms in this Agreement.
Plan for return and destruction of the data once the processing is complete	After the fraud assessment is complete and the results returned to the requesting organisation the personal data utilized to make the assessment, less any payment transaction data, will be deleted unless the data controller wishes it to be retained, in which case it will be retained for the duration of time as defined by the data controller. On termination the payment transaction data will be retained for the international card scheme regulations chargeback period. Data will be extracted and returned to the Controller in a secure manner (if requested by the data controller) or destroyed in an approved manner after the end of the contract as extended by the international card scheme regulations chargeback period.



**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – Income Management Suite, including Income Management, Paye.net and Counter Receipting**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Income Management Product suite as indicated in the applicable Product Order. The terms and conditions that apply to the Income Management Product consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. INCOME MANAGEMENT PRODUCT.**

1.1 Subject to the terms of the Agreement, Capita will provide Customer with the Income Management Product for Customer to use in accordance with the Income Management Manual as the same is amended from time to time and published within the Product help link.

responsible for providing access to the hosted Income Management Product in accordance with the terms of the Agreement.

3.2 Notwithstanding anything to the contrary, Capita is not responsible or liable for:

3.2.1 Day-to-day operation of the functionality available within the Income Management Product

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the Income Management Product, Customer shall be responsible for:

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the Income Management Product provided that such alterations do not have a material adverse effect on the existing functionality of the Income Management Product. Any alterations to the Income Management Product that are introduced pursuant to this Section 4.14.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

2.1.1 Ensuring the Income Management Product is suitable for Customer's business requirements; and

2.1.2 Managing access to the system; and

2.1.3 Ensuring that card data classed as sensitive under PCI DSS is not stored with the Product; and

2.1.4 Complying with any data laws, rules and regulations data source usage and Personal Information usage;

2.1.5 PCI reporting and audit's associated with Customer's own business; and

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around any configuration changes made within the Income Management Product

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the Income Management Product, Capita is

---

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – Point-to-Point Encryption (P2PE)**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the P2PE Product as indicated in the applicable Product Order. The terms and conditions that apply to the P2PE Product consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. P2PE PRODUCT.**

1.1 Subject to the terms of the Agreement, Capita will provide Customer with the P2PE Product for Customer to use in accordance with the P2PE Solution Description as the same is amended from time to time.

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the P2PE Product, Customer shall be responsible for:

2.1.1 Ensuring the guidance included in the provided P2PE Instruction Manual (PIM) is followed.

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the P2PE Product, Capita is responsible:

3.1.1 for providing access to the P2PE Product in accordance with the terms of the Agreement.

3.1.2 For providing the Customer with updated copies of the P2PE Instruction Manual (PIM).

3.2 Notwithstanding anything to the contrary, Capita is not responsible or liable for:

3.2.1 Day-to-day operation of the functionality available within the P2PE Product.

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the P2PE Product provided that such alterations do not have a material adverse effect on the existing functionality of the P2PE Product. Any alterations to the P2PE Product that are introduced pursuant to this Section 4.14.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around any configuration changes made within the P2PE Product.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – Internet Payments**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Internet Payments Service as indicated in the applicable Product Order. The Internet Payments Service is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the Internet Payments Service consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. INTERNET PAYMENTS SERVICE.**

1.1 Subject to the terms of the Agreement, Capita will provide Internet access to the Internet Payments Service for the Customer's customers and/or Consumers to use to select and make payment for services and items.

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the Internet Payments Service, Customer shall be responsible for:

2.1.1 Ensuring the Internet Payments Service is suitable for Customer's business requirements.

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the Internet Payments Service, Capita is responsible for providing access to the hosted Internet Payments Service in accordance with the terms of the Agreement.

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the Internet Payments Service provided that such alterations do not have a material adverse effect on the existing functionality of the Internet Payments Service. Any alterations to the Internet Payments Service that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available

on request and shall form part of the Agreement.

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around testing of any configuration changes made by Capita to the Internet Payments Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – Configuration Management System**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Configuration Management System as indicated in the applicable Product Order. The Configuration Management System is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the Internet Payments Service consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. CONFIGURATION MANAGEMENT SYSTEM.**

1.1 Subject to the terms of the Agreement, Capita will provide Internet access to the Configuration Management System for the Customer, to enable configuration of the Internet Payments Service.

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the Configuration Management System, Customer shall be responsible for:

2.1.1 Ensuring the Configuration Management System is suitable for Customer's business requirements; and

2.1.2 That Internet Payment Service configured using the Configuration Management System meets the Customer's requirement for collecting payments

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the Configuration Management System, Capita is responsible for providing access to the hosted Configuration Management System in accordance with the terms of the Agreement.

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the

Configuration Management System provided that such alterations do not have a material adverse effect on the existing functionality of the Internet Payments Service. Any alterations to the Configuration Management System that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around testing of any configuration changes made by Capita to the Configuration Management System, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – Touch Tone**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Touch Tone Service as indicated in the applicable Product Order. The Touch Tone Service is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the Touch Tone Service consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. TOUCH TONE SERVICE.**

1.1 Subject to the terms of the Agreement, Capita will provide access to the Touch Tone Service for the Customer's customers and/or Consumers to use to select and make payment for services and items.

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the Touch Tone Service, Customer shall be responsible for:

2.1.1 Ensuring the Touch Tone Service is suitable for Customer's business requirements.

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the Touch Tone Service, Capita is responsible for providing access to the hosted Touch Tone Service in accordance with the terms of the Agreement.

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the Touch Tone Service provided that such alterations do not have a material adverse effect on the existing functionality of the Touch Tone Service. Any alterations to the Touch Tone Service that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around testing of any configuration changes made by Capita to the Touch Tone Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS – sCloud**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the sCloud Service as indicated in the applicable Product Order. The sCloud Service is a SaaS Product as defined in the Master Terms. The terms and conditions that apply to the sCloud Service consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. SCLLOUD SERVICE.**

1.1.1 Infrastructure: The following Capita infrastructure is in place for the provision of the sCloud subscription services:

- (a) Database servers including the version of database required to operate the system;
- (b) Application servers including the version of operating system required to operate the system;
- (c) Web servers required for the deployment of solution;
- (d) The core site and required hardware for the infrastructure;
- (e) Disaster recover site and all links and associated hardware required to provide the service; and
- (f) Links for all telecommunications to ensure that the solution is accessible via a standard internet connection within the confines of the SLA.

1.1.2 Upgrades and Maintenance: Capita will install and maintain:

- (a) All operating system related patches required to keep the solution secure and maintain the application;
- (b) All database related patches required to maintain the solution and security;
- (c) All web server related patches required to maintain the solution and security;
- (d) All maintenance in relation to the disaster recover site;
- (e) Upgrades and patches of capita software installed on the environment; and
- (f) Upgrades to the environments will be scheduled in line with the SLA.

1.1.3 Capacity

- (a) At the time of contract an agreed maximum capacity will be outlined. If this capacity is increased, then price increases in line with the agreed banding will be applied.



- |  |  |
|--|--|
| <p>1.1.4 Licensing: The agreement covers the following licenses required to run the solution:</p> <ul style="list-style-type: none"> <li>(a) Microsoft SQL server</li> <li>(b) Microsoft Windows Server</li> <li>(c) Capita Software</li> <li>(d) Business Objects runtimes</li> <li>(e) Five Citrix Licences - distributed; 3 to live and 2 to test. Additional licenses are available on request for an additional charge</li> </ul> <p>1.1.5 The agreement does not cover:</p> <ul style="list-style-type: none"> <li>(a) The Customer's own workstation requirements and licenses</li> </ul>   | <ul style="list-style-type: none"> <li>(c) The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.</li> </ul> <p>2.1.3 For the avoidance of doubt, this contract does not cover:</p> <ul style="list-style-type: none"> <li>(a) Internal daily procedures related to your own applications configuration.</li> <li>(b) Any administration associated with the day to day running of your system</li> <li>(c) Links from the customer site to the Capita Hosted system</li> <li>(d) Access for your internal users to solution hosted on the Hosted system</li> <li>(e) Links to the internet from your own workstations required for some services.</li> <li>(f) Your own security compliance.</li> </ul> <p>2.1.4 The Customer will provide Capita with all information, access, and full good faith cooperation reasonably necessary to enable Capita to deliver the Professional Services.</p> |
| <p><b>2. <u>CUSTOMER OBLIGATIONS.</u></b></p>  |  |
| <p>2.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Customer shall be responsible for:</p> <p>2.1.1 Ensuring the SCloud Service is suitable for Customer's business requirements;</p> <p>2.1.2 The supply of the following:</p> <ul style="list-style-type: none"> <li>(a) Adequate resource at point of upgrade for internal acceptance testing of the solution post any upgrade into the customer test environment.</li> <li>(b) This resource should be available for the duration of the agreed testing period and should provide immediate feedback on any issues found.</li> </ul> | <p>3. <b><u>CAPITA OBLIGATIONS.</u></b></p> <p>3.1 In addition to Customer's obligations under the Agreement, with respect to the SCloud Service, Capita is responsible for providing access to the hosted SCloud Service in accordance with the terms of the Agreement.</p>   |

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the SCloud Service provided that such alterations do not have a material adverse effect on the existing functionality of the SCloud Service. Any alterations to the SCloud Service that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

5.1 Customer shall undertake all necessary due diligence around testing of any configuration changes made by Capita to the SCloud Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

**PAYMENT APPLICATION-SPECIFIC ADDITIONAL TERMS - POST OFFICE AND PAYPOINT BILL PAYMENT SERVICE**

These Payment Application-Specific Additional Terms contain additional terms that apply whenever Customer licenses the Post Office and PayPoint Bill Payment Service as indicated in the applicable Product Order. The terms and conditions that apply to the Post Office and PayPoint Bill Payment Service consist of the Master Terms, the Payment Services Platform Product Terms, the applicable Product Order, and these Payment Application-Specific Additional Terms. In some cases, additional or modified rights to those provided in these Payment Application-Specific Additional Terms will be included in a Product Order.

**1. POST OFFICE AND PAYPOINT BILL PAYMENT SERVICE.**

1.1 Subject to the terms of the Agreement, Capita will provide access to the Post Office and PayPoint Bill Payment Service for the Customer's customers and/or Consumers to use.

1.2 The following are the Services to be provided by Capita via PayPoint or Post Office as applicable:

1.2.1 Collecting payments from Customer's customers and/or Consumers using PayPoint.

(a) Capita/PayPoint as applicable will collect cash payments from Customer's customers and/or Consumers, subject to the minimum and maximum Transaction values of £5 and £200 respectively, who hand to an Agent a form of a Payment Media (being a bar-code, smartcard, magnetic swipe card and/or any other media forms which allow Customer's customers to make over the counter payments to the Customer), together with a payment medium. For the purposes of these Payment Application-Specific Additional Terms, an "Agent" means the

collection agents retained by PayPoint to interface with and collect payments on behalf of the Customer (via Capita) from Consumers or Customer's customers.

(b) The Agent will then be able to enter the amount to be paid and the terminal will capture the Customer reference details, register the cash payment and issue a legible Receipt in respect of the payment made by the Consumer or Customer's customer.

1.2.2 Settlement using PayPoint:

(a) Capita will pay to the Customer all payments collected from Consumers and Customer's customers by Agents in accordance with the banking arrangements provided by Capita.

1.2.3 For Post Office Services:

(a) On presentation by a Consumer or a customer of the Customer of a Barcoded Bill or Magnetic Swipecard together with a Payment, Capita shall provide the Services as follows:

- |       |   |   |
|-------|---|---|
| (i)   | The Post Office will scan the Barcoded Bill or swipe the Magnetic Swipecard via Post Office automated payments terminal and accept the Payment;   | Customer and payable by a Consumer or a customer of the Customer and containing a barcode created in accordance with specifications agreed between the Capita and the Customer. This does not include any other means of bill issuing, including (without limitation) by internet or by SMS text message; a “Magnetic Swipecard” means a magnetic swipecard issued by a Customer to a Consumer or a customer of the Customer to use for Payments, and containing an account number and reference number, created in accordance with specifications agreed between the Capita and the Customer; a “Payment” means a payment made by a Consumer or a customer of the Customer at a Post Office® Branch in respect of the Customer’s services; “Standard IIN” means an issuer identification number owned by and registered to a Customer and which is used to identify Transaction data pertaining specifically to that Customer and excludes always any Generic IIN. |
| (ii)  | The Post Office will issue the Consumer or Customer’s customer with a receipt which in the case of the Standard IIN contains the Customer Name and header and footer details as agreed between Capita and Customer; |   |
| (iii) | make available to the Customer the data relating to the transactions, in the format determined by Capita;   |   |
| (iv)  | remit the amount of the Payment to the Customer in accordance with the timescales set out by Capita to the Customer.  |   |

1.2.4 Acceptance of Payments

For the purposes of these Payment Application-Specific Additional Terms, a “Barcoded Bill” means a paper bill issued by the

- (a) Payments by Consumers or customers of Customer in cash, by debit card, by credit card, by pre-paid card and, solely in relation

to those Post Office® Branches which can accept cheques, by United Kingdom bank or building society cheque (payments by cheque to be made payable to Post Office) will be accepted.

Capita and Post Office for collection of Payments at Post Office® Branches, and therefore that Payment by a Magnetic Swipecard or of a Barcoded Bill will be accepted at any Post Office® Branch.

- (b) Cheques marked “refer to drawer please re-present” (or any equivalent term) will be re-presented by Post Office once for clearance within 5 Business Days of their return. If, on re-presentation, such cheques are returned unpaid, they shall be delivered to the Customer as soon as practicable. The value of such cheque will be deducted from the settlement due to the Customer.

2.1.3 Acceptance of these terms and conditions is also an acceptance of:

- (a) The PayPoint Collections Agreement and the Post Office® Processing Agreement, which are impliedly accepted upon use of PayPoint and Post Office Services. These are incorporated into this Agreement.
- (b) Transactions are settled net of all transaction charges. Post Office transactions are subject to annual inflationary increases in line with RPI.
- (c) Capita will charge an additional administrative cost per returned cheque.

**2. CUSTOMER OBLIGATIONS.**

2.1 In addition to Customer's obligations under the Agreement, with respect to the Post Office and PayPoint Bill Payment Service, Customer shall be responsible for:

- 2.1.1 Ensuring the Post Office and PayPoint Bill Payment Service is suitable for Customer’s business requirements.
- 2.1.2 For Post Office payments, the Customer shall:
  - (a) issue Barcoded Bills and Magnetic Swipecards as required;
  - (b) communicate to their Consumers or customers the fact that the Customer has an arrangement with

**3. CAPITA OBLIGATIONS.**

3.1 In addition to Customer's obligations under the Agreement, with respect to the Post Office and PayPoint Bill Payment Service, Capita is responsible for providing access to the hosted Post Office and PayPoint Bill Payment Service in accordance with the terms of the Agreement.

**4. CHANGES.**

4.1 From time-to-time Capita may introduce enhancements and fixes to the Post Office and PayPoint Bill Payment Service provided that such alterations do not have a material adverse effect on the existing functionality

of the Post Office and PayPoint Bill Payment Service. Any alterations to the Post Office and PayPoint Bill Payment Service that are introduced pursuant to this Section 4.1 shall be made available on request or via updates to the manuals and release notes available on request and shall form part of the Agreement.

**5. TESTING.**

- 5.1 Customer shall undertake all necessary due diligence around testing of any configuration changes made by Capita to the Post Office and PayPoint Bill Payment Service, to ensure they meet the requirements agreed in the configuration documentation and instructions given by the Customer.

**MASTER TERMS (UK)**

The following terms and conditions ("**Master Terms**") are incorporated into the Product Order and, together with the applicable Product Terms and 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 Master Terms will be included in a Product Order.

These Master Terms are applicable to both Software as a Licence (SaaS) and Software as a Service (SaaS) Products offered by Capita. The Product Order will set out whether the Product ordered by Customer is a SaaS or a SaaS Product and Customer should ensure that it reviews the Product Terms for the applicable SaaS or SaaS Product, as the terms and conditions vary for SaaS Products and SaaS Products.

1. **DEFINITIONS AND INTERPRETATION.**
  - 1.1 "**Access Credentials**" has the meaning set out in Section 3.1 of these Master Terms.
  - 1.2 "**Affiliate**" means, in relation to an entity, any entity controlling, controlled by, or under common control with that entity, where "control" (in its various forms) means having the right to direct the management and affairs of an entity, whether through ownership of voting securities, by contract, or otherwise.
  - 1.3 "**Agreement**" has the meaning given in the Product Order.
  - 1.4 "**Agreement Effective Date**" means the effective date of the Agreement, as specified in the Product Order.
  - 1.5 "**Authorised Purpose(s)**" means the purpose(s) set forth in the applicable Product Terms for which Authorised Users are permitted to access and use the Product(s) and any related Content.
  - 1.6 "**Authorised User**" means the employees and independent contractors of Customer and Listed Affiliates (if any) who are entitled to use the Product(s) in accordance with the Agreement on Customer's or such Listed Affiliates' behalf.
  - 1.7 "**Capita**" means the Capita entity stated in the Product Order.
  - 1.8 "**Capita IT Systems**" means any hardware, software or other IT infrastructure used by Capita or its subcontractors to provide the Product(s) and Services, or otherwise made available to Customer under or in connection with the Agreement.
  - 1.9 "**Capita Materials**" has the meaning given in Section 6.4.12 of these Master Terms.
  - 1.10 "**Confidential Information**" means all written or oral information, disclosed, directly or indirectly, by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), related to the business or operations of the Disclosing Party or a third party that has been marked or otherwise identified as confidential or that by the nature of the information or circumstances surrounding its disclosure ought reasonably to be understood as being confidential or proprietary. Confidential Information of Capita includes the Product(s), Documentation and Content.
  - 1.11 "**Content**" means electronic data, information and/or other types of content (including third party websites and web-based services), if any, that is displayed, distributed or otherwise made accessible to Customer and Listed Affiliates via the Product(s), but does not include Customer Data, Customer Confidential Information or the Product(s).
  - 1.12 "**Customer**" means the entity specified as the customer in the Product Order and which has agreed to licence Products from Capita.
  - 1.13 "**Customer Data**" means any data, information and/or other types of content submitted, posted or displayed by, or on behalf of Customer and its Affiliates, on the Product(s) or otherwise shared with Capita in connection with the Agreement, excluding Content.
  - 1.14 "**Customer Systems**" means Customer's information technology infrastructure, including computers, software, databases, electronic systems, and networks, whether

- operated directly by Customer or through a third party.
- 1.15 **“Deliverable”** means any deliverable or output to be provided to Customer in connection with Professional Services as set out in the Product Order, excluding any Customer materials contained in the Deliverables and standard Products, Content and Documentation provided by Capita.
- 1.16 **“Documentation”** means any then-current user manual, handbook or other documentation for a Product made available by Capita for Customer’s use.
- 1.17 **“Export Control Laws”** has the meaning given to it in Section 5.1 of these Master Terms.
- 1.18 **“Hosting Fees”** means the hosting fees described as such in the Product Order.
- 1.19 **“Hosting Period”** means, for SaaS Products, the period stated in a Product Order (as it may be renewed or extended per the terms of the Product Order) during which the Hosting Services shall be provided.
- 1.20 **“Hosting Provider”** has the meaning given to it in Section 3.3 of these Master Terms.
- 1.21 **“Hosting Services”** means: (a) in respect of SaaS Products, the services (if any) described as such in the Product Order or the applicable Product Terms; and (b) in respect of SaaS Products, the hosting of the SaaS Products by Capita or a third party in accordance with the Agreement.
- 1.22 **“Insolvency Event”** means, in respect of either Party: (a) other than for the purposes of a bona fide reconstruction or amalgamation, such Party passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that Party being otherwise dissolved; (b) the appointment of an administrator of, or the making of an administration order in relation to, that Party, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of that Party’s undertaking, assets, rights or revenue; (c) that Party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; (d) that Party being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; (e) that Party entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors; or (f) that Party ceasing or threatening to cease to carry on business.
- 1.23 **“Intellectual Property Rights”** means all intellectual and industrial property rights of any type or nature recognised in any jurisdiction in the world, including copyrights, moral rights and other rights associated with works of authorship; trade secrets and know-how; patents, patent rights, and other rights in inventions; trade marks (whether registered or unregistered), trade names, trade dress, service marks, logos, symbols and other source identifiers; and including applications and registrations for, and extensions, continuations, renewals, and re-issuances of any of the foregoing.
- 1.24 **“Licence Fees”** means the licence and/or subscription fees described as such in the Product Order.
- 1.25 **“Listed Affiliate”** means a Customer Affiliate listed in a Product Order as a Customer entity authorised to use one or more of the Products listed therein during the applicable Usage Period.
- 1.26 **“Maintenance Release”** has the meaning given to it in the applicable Product Terms.
- 1.27 **“New Version”** has the meaning given to it in the applicable Product Terms.
- 1.28 **“Payment Terms”** means the merchant payment terms and conditions incorporated where applicable into the Product Order.
- 1.29 **“Product Order”** means the order, in the form prescribed by Capita, submitted by Customer for one or more Products and accepted by Capita and which incorporates these Master Terms, the applicable Product Terms and, if applicable, the Professional



- Services Terms.
- 1.30 **“Product Terms”** means the additional terms and conditions (including the Usage Rights, Payment Terms and terms describing and governing the Support Services and/or Hosting Services (if any), and any documents incorporated, or referred to, therein) applicable to each Product (and related Content) ordered by Customer and which are incorporated into the Product Order.
- 1.31 **“Product(s)”** means the SaaS Product(s) and/or SaaS Product(s) (including any configuration of such Product(s) by Customer or its Authorised Users) set out in the Product Order, and excludes Content and Third Party Services.
- 1.32 **“Professional Services”** means the professional services (such as installation, configuration, consulting, training and exit assistance) to be delivered by Capita to Customer as specified in the Product Order.
- 1.33 **“Professional Services Fees”** means the fees for Professional Services described as such in the Product Order.
- 1.34 **“Professional Services Terms”** means the terms describing and governing the Professional Services (if any) provided by Capita and which are incorporated into the Product Order.
- 1.35 **“Relevant Period”** has the meaning set out in Section 11.2 of these Master Terms.
- 1.36 **“Representatives”** has the meaning set out in Section 9 of these Master Terms.
- 1.37 **“Restricted Item”** has the meaning set out in Section 6.1 of these Master Terms.
- 1.38 **“SaaS Product(s)”** means software products (including any Maintenance Releases and New Versions) licensed to Customer under the Agreement.
- 1.39 **“SaaS Product(s)”** means software-as-a-service subscription products, including updates thereto made generally available by Capita to its customers, to which Customer is granted access under the Agreement.
- 1.40 **“Services”** means Support Services, Professional Services and Hosting Services (as applicable).
- 1.41 **“Support Fees”** means the fees for Support Services described as such in the Product Order.
- 1.42 **“Support Hours”** means any period of hours specified in the Product Order (or applicable Product Terms) during which Capita shall provide the Support Services detailed in the Product Order.
- 1.43 **“Support Period”** means the period stated in a Product Order (as it may be renewed or extended per the terms of the Agreement) during which Capita shall supply, and Customer shall take and pay for, the Support Services.
- 1.44 **“Support Services”** means the support services provided by Capita pursuant to the Agreement, excluding any Professional Services and Third Party Services.
- 1.45 **“Suspension”** means a suspension of a SaaS Product) or any Services in accordance with Section 2.6 of these Master Terms.
- 1.46 **“Third Party Services”** has the meaning set out in Section 7.3 of these Master Terms.
- 1.47 **“Third Party Software”** means any open-source or other software relating to a Product that are not proprietary to Capita.
- 1.48 **“Usage Period”** means the period stated in the Product Order (as it may be renewed or extended per the terms of the Agreement) during which Customer’s Authorised Users are permitted to use and/or access the Product(s) listed therein.
- 1.49 **“Usage Rights”** means the licence to use or right to access (as applicable) the Product, Content and/or Documentation as set out in the applicable Product Terms.
- 1.50 Unless the context requires otherwise: (a) “including” (and any of its derivative forms) means including but not limited to; (b) “may” means has the right, but not the obligation to do something and “may not” means does not have the right to do something; (c) “will” and “shall” are expressions of command, not merely expressions of future intent or

expectation; (d) “written” or “in writing” is used for emphasis in certain circumstances, but that will not derogate from the general application of the notice requirements set forth in the Agreement in those and other circumstances; (e) use of the singular imports the plural and vice versa; and (f) use of a specific gender imports the other gender(s).

1.51 A reference to a statute or statutory provision: (a) is a reference to it as amended, extended or re-enacted from time to time; and (b) shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.52 In the Agreement, Capita and Customer are sometimes referred to individually as a “**Party**” and together as the “**Parties**”.

**2. USAGE RIGHTS.**

2.1 Customer’s and its Listed Affiliates’ Usage Rights are specified in the Product Order and applicable Product Terms. Unless explicitly stated otherwise, such Usage Rights shall be on a non-exclusive and non-transferable basis.

2.2 The Agreement does not convey to Customer title to or ownership of the Product(s), Content, Documentation or Deliverables, but only a right of limited use on the terms and conditions set forth herein and in the Product Order (and any applicable Product Terms and Professional Services Terms). All rights not expressly granted by Capita to Customer are reserved by Capita and its licensors.

2.3 The Product(s), Content and Deliverables may contain proprietary and/or Third Party Software components that are subject to additional or different licence and notice terms. If so, Customer shall (and shall procure that any Listed Affiliates and its and their Authorised Users shall) comply with all applicable licence and notice terms identified in the Product Order (or applicable Product Terms) or notified by Capita to Customer from time to time.

2.4 Customer and Listed Affiliates may exercise the Usage Rights through Authorised Users. Customer is responsible and liable for all

uses of the Product(s), Content, Documentation and Deliverables resulting from access provided by Customer or any Listed Affiliate, directly or indirectly, whether such access or use is permitted by, or in violation of, the Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Listed Affiliates and Authorised Users, and any act or omission of a Listed Affiliate or an Authorised User that would constitute a breach of the Agreement if taken by Customer will be deemed a breach of the Agreement by Customer. Customer shall make all Listed Affiliates and Authorised Users aware of the provisions of the Agreement as applicable to such Listed Affiliates’ and Authorised Users’ use of the Product(s), Content, Documentation or Deliverables and shall cause Listed Affiliates and Authorised Users to comply with such provisions.

2.5 Customer may make a reasonable number of copies of the SaaS Product(s) and Documentation solely for back-up and archival purposes. When doing so, Customer shall reproduce and include all copyright, trade marks (whether registered or unregistered), and other proprietary rights notices on any copies it makes (or has made) of the SaaS Product(s) and Documentation, including partial copies. Any copies Customer makes (or has made) of the SaaS Product(s) or Documentation, in whole or in part, are the property of Capita (and its licensors).

2.6 In addition to Capita’s suspension rights under Section 8.5.2 below, Capita may directly or indirectly, suspend or otherwise deny Customer’s (including any Authorised User’s) access to, or use of, all or any part of a SaaS Product or any Services provided under a Product Order without incurring any resulting obligation or liability, if:

2.6.1 Capita reasonably determines that:

- (a) there is a threat or attack on the SaaS Product or the Services;
- (b) Customer’s or any Authorised User’s use of the SaaS Product or the Services disrupts or poses a security risk to Capita, the SaaS

- Product or the Services or to any other customer or vendor of Capita;
- (c) Customer, or any Authorised User, is using the SaaS Product or the Services for fraudulent or illegal activities;
  - (d) Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganisation, liquidation, dissolution, or similar proceeding; or
  - (e) Capita's provision of the SaaS Product(s) or the Services to Customer or any Authorised User is prohibited by applicable law;
- 2.6.2 any vendor of Capita has suspended or terminated Capita's access to or use of any third party services or products required to enable Capita to provide, or Customer to access, the SaaS Product(s) or the Services; or
- 2.6.3 Customer is in breach of the Usage Rights (or any other access and/or license terms and restrictions) specified under the Agreement.
- 2.7 Capita shall use commercially reasonable efforts to provide written notice of any Suspension and to provide updates regarding resumption of access to the SaaS Product(s) and/or the Services (as applicable) following any Suspension. Capita shall use commercially reasonable efforts to resume providing access to the SaaS Product(s) and/or the Services (as applicable) as soon as reasonably possible after the event giving rise to the Suspension is cured. Capita will have no liability for any damage, liabilities, losses (including any loss of data or profits), expenses, or any other consequences that Customer may incur as a result of a Suspension or as a result of suspension in accordance with Section 8.5.2 of these Master Terms. Section 2.6 and this Section 2.7 do not limit any of Capita's other rights or remedies, whether at law, in equity, or under the Agreement (including, without limitation, Capita's rights to terminate the Agreement).
- 2.8 Capita reserves the right, in its sole discretion, to charge Customer, and Customer agrees to pay, any charges, fees or other costs incurred by Capita in resuming the provision of access to the Product(s) or Services following a Suspension, or any suspension in accordance with Section 8.5.2 of these Master Terms that is caused by, or attributed to, in Capita's opinion, Customer or any Authorised User.
- 2.9 Without prejudice to Capita's other rights or remedies, whether at law, in equity, or under the Agreement (including, without limitation, Capita's rights to terminate the Agreement), if any unauthorised use is made of the Product(s), Content or Documentation and such unauthorised use is attributable to any act or omission of, or through, Customer (including breach of any of the provisions of the Agreement), then Customer shall immediately be liable to pay Capita an amount equal to the fees that Capita would have charged, had Capita authorised the unauthorised use at the beginning of the period of that unauthorised use, together with interest at the rate of four per cent (4%) per annum above Barclays Bank Plc's current base rate from time to time; this interest will begin to accrue on the date on which that unauthorised use started and will accumulate on the outstanding balance on a daily basis until paid in accordance with this Section 2.9.
3. **ACCESS AND HOSTING.**
- 3.1 If necessary for Authorised Users to gain access to or otherwise use or operate a Product, Capita shall provide to Customer the necessary keys and other access protocols or credentials (collectively, "**Access Credentials**") promptly after accepting Customer's Product Order.
- 3.2 If so requested by Capita, Customer shall designate at least one Authorised User to serve as administrator and act as Customer's principal point of contact with Capita for purposes of Customer's account administration.

- 3.3 For SaaS Product(s), the Product Order (or applicable Product Terms) shall specify whether Capita or Customer (either itself or through a third party hosting provider ("**Hosting Provider**")) will provide the hosting environment for the SaaS Product(s). If Customer is responsible for providing the hosting environment (either itself or through a Hosting Provider) Customer shall:
- 3.3.1 ensure the hosting environment meets Capita's operating environment specifications for the SaaS Product(s) (including as may be specified in the applicable Product Terms) and is properly configured for installation and operation of the SaaS Product(s);
- 3.3.2 arrange for Capita to have access to the hosting environment promptly following acceptance of the Product Order for purposes of installing and configuring the SaaS Product(s) for access and use by Authorised Users (where the Product Order provides that Capita is responsible for such installation and/or configuration of the SaaS Product(s) in the hosting environment), and thereafter as may be reasonably necessary for Capita's ongoing provision of services; and
- 3.3.3 if Customer authorises a Hosting Provider to host and operate the SaaS Product(s) on Customer's behalf, first obtain such Hosting Provider's written agreement to be subject to, and comply with, all applicable terms and conditions of the Agreement. In all such cases, Customer shall be responsible and liable for the acts and omissions of its (and its Affiliates') personnel and contractors (including the Hosting Provider) as if they were the acts and omissions of Customer.
- 3.4 If the Product Order (or applicable Product Terms) specifies that Capita is responsible for providing the hosting environment for any of the Products, Capita shall (or shall engage a Hosting Provider to) perform the Hosting Services during the applicable Hosting Period(s). Capita reserves the right to change, discontinue, modify or remove features or functionality from the Hosting Services upon notice to Customer, including the termination of any Hosting Services where a Hosting Provider providing such Hosting Services on behalf of Capita ends its provision of such Hosting Services.
- 3.5 Unless otherwise specified in the Product Order (or applicable Product Terms), Capita does not guarantee the availability of, or any other service levels relating to, any Hosting Services provided by Capita or any Hosting Provider.
- 3.6 Customer shall comply with:
- 3.6.1 the terms of any Hosting Provider engaged by Capita for the performance of the Hosting Services, as set out in the Product Order and as updated from time to time, as notified by Capita to Customer; and
- 3.6.2 any Capita hosting terms as notified by Capita to Customer from time to time.
4. **CONTENT, CUSTOMER DATA AND CUSTOMER SYSTEMS.**
- 4.1 The Product(s) may enable Authorised Users to search for, find, store, manage, and use Content that is provided or made accessible through the Product(s) or to submit, post or display Customer Data to or on the Product(s). Customer acknowledges that Capita does not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, reliability, usefulness, timeliness or other attributes of any Content or Customer Data, nor does Capita review, test or attempt to verify the accuracy or currency of any Customer Data or Content. As between Customer and Capita, Customer is solely responsible for:
- 4.1.1 determining the suitability of any Content or Customer Data for its intended use by Customer (including any necessary testing); and
- 4.1.2 as necessary for its intended use, verifying the authenticity, integrity, security and accuracy of the Content and any Customer Data prior to using it.

4.2 Capita has no obligation to preview, verify, flag, modify, filter or remove any Customer Data or Content. Capita may, in its sole discretion:

4.2.1 modify and add Content made available through the Product(s); and

4.2.2 remove, disable or restrict access to any Content or Customer Data (but is not responsible for any failures or delays in removing, disabling or restricting access to any Content or Customer Data, unless otherwise provided herein),

including Content or Customer Data that may be considered harmful, inaccurate, unlawful or otherwise objectionable or if Capita is required by any third party rights holder to remove Content or Customer Data, or receives information that Content or Customer Data may violate applicable law or third party rights.

4.3 Without prejudice to any obligation in these Master Terms, Customer shall comply with its obligations relating to Customer Data and Customer Systems in the Product Order and applicable Product Terms.

5. **EXPORT.**

5.1 Customer shall not, and shall ensure that its Listed Affiliates shall not, export (directly or indirectly) the Product(s) or any technical data acquired from Capita under the Agreement in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which such Export Control Laws, at the time of export, require an export licence or other governmental approval without first obtaining such licence or approval.

5.2 Customer undertakes (and shall ensure that each Listed Affiliate undertakes):

5.2.1 to contractually oblige any third party to whom it discloses or transfers any such data or Product(s) to make an undertaking to it in similar terms to the one set out in Section 5.1 above; and

5.2.2 if requested, to provide Capita with any reasonable assistance to enable Capita to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

6. **RESTRICTIONS AND CUSTOMER OBLIGATIONS.**

Restrictions.

6.1 Customer shall not, and shall cause Listed Affiliates and Authorised Users not to, act outside the scope of the Usage Rights that are expressly granted by Capita in the Agreement. Further, in relation to any Product, Content or Documentation (each a "**Restricted Item**") Customer shall not, and shall not permit or allow Listed Affiliates, Authorised Users, or any other person to:

6.1.1 use the Restricted Item in any manner that is not authorised by, or not consistent with, the Agreement;

6.1.2 reverse engineer, decompile, disassemble, or otherwise translate or derive any trade secrets embodied in the Restricted Item or the source code for any components of the Restricted Item, or attempt to do so (except as otherwise expressly permitted by applicable law for computer interoperability);

6.1.3 access or use the Restricted Item in order to develop or support, or assist another party in developing or supporting, any products or services competitive with the Restricted Item;

6.1.4 disclose or give access to the Restricted Item to any person who is involved in any way in the design or development of a competitive alternative to any Product;

6.1.5 access or use the Restricted Item to operate the business of a third party or to process data or content provided by a third party for the operation of a third party's business, or otherwise use the Restricted Item on a third

party's behalf, or to act as a service bureau or provider of application services to any third party;

6.1.6 alter, obscure, or remove any copyright, trade mark (whether registered or unregistered) or other proprietary rights notice from the Restricted Item;

6.1.7 knowingly or intentionally re-use, disseminate, copy, or otherwise use the Restricted Item in a way that infringes, misappropriates, or violates any trade mark (whether registered or unregistered), copyright, patent, trade secret, publicity, privacy or other right of any third party;

6.1.8 take any action designed or intended to:

(a) interfere with the proper working of the Restricted Item; or

(b) circumvent, disable, or interfere with security-related features of the Restricted Item or features that prevent or restrict use, access to, or copying the Restricted Item, or that enforce limitations on use of the Restricted Item;

6.1.9 sell, lend, lease, assign, novate, transfer, pledge, permit a lien upon, mortgage, charge or sublicense any of the rights or obligations under the Agreement with respect to the Restricted Item;

6.1.10 do anything which may damage the reputation of Capita, its Affiliates, Capita's licensors or the Restricted Items;

6.1.11 move, modify, interface, copy, broadcast, reproduce, port or otherwise use or route any Restricted Items, or any portion thereof, with or to any other equipment, network or software that Capita, in its sole opinion, determines is interfering or may interfere with the performance of the Restricted Items, or any portion thereof and, from time to time, upon

Capita's written request, Customer shall notify Capita in writing of any and all such equipment, network and software;

6.1.12 access, store, distribute or transmit any material during the course of its use of the Product(s) or use the Product(s) that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) is a virus or malicious code in any form;

(c) facilitates illegal activity;

(d) depicts sexually explicit images;

(e) promotes unlawful violence;

(f) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;

(g) violates any third party privacy rights; or

(h) is otherwise illegal or causes damage or injury to any person or property; or

6.1.13 interfere with or disrupt the integrity or performance of the Product(s), including by disrupting the ability of any other person to use or enjoy the Product(s) or Content, or attempt to gain unauthorised access to the Product(s), Customer Data, Content or related systems or networks.

The restrictions set out in this Section 6.1 are in addition, and without prejudice, to any restrictions set out in the Product Order or the applicable Product Terms.

6.2 At Capita's written request, and no more than once every six (6) months, Customer shall provide Capita with a signed certification verifying that the Restricted Items are being used and/or accessed in accordance with the Agreement and that no unlicensed or unauthorised use of the

Restricted Items is occurring.

6.3 In addition to the foregoing, at Capita's written request, Customer shall (and shall procure that any Listed Affiliates, and any Hosting Provider (if applicable), shall) permit Capita or its designated representatives to review and verify Customer's (and Listed Affiliates' and, if applicable, the Hosting Provider's) records, deployment, and use of the Restricted Items for compliance with the terms and conditions of the Agreement, and:

6.3.1 such review and verification may be conducted remotely or onsite, at Capita's discretion;

6.3.2 any onsite review shall be scheduled on reasonable notice, shall be conducted during normal business hours if at Customer's or a Listed Affiliate's or the Hosting Provider's facilities, and shall not unreasonably interfere with Customer's or the Hosting Provider's business activities (as applicable); and

6.3.3 if any such verification process determines that Customer's (including any Listed Affiliates') usage of the Product(s) exceeds the number of licences or other Usage Rights Customer has purchased, Customer shall:

(a) unless the Product Order or applicable Product Terms states otherwise, promptly place an order with Capita for (and Capita shall be entitled to invoice Customer for) at least the number of additional licences required for Customer and any Listed Affiliates to come into compliance with the Agreement. The price of each such licence will be at Capita's then current list price, calculated so as to cover the time period during which the licence should have been in effect to avoid any period of non-compliance, and bearing interest at the rate provided for in Section 8.5 below from the date when the licence subscriptions should

have been purchased to the actual purchase date; and

(b) reimburse Capita in full for the amount of costs incurred by Capita in undertaking such verification process.

Customer Obligations.

6.4 Without prejudice to any other obligations of Customer under the Agreement, Customer shall:

6.4.1 follow all reasonable instructions given by Capita from time to time with regard to the use of the Product(s) and any trade marks owned by Capita and other indications of the property and rights of Capita;

6.4.2 provide Capita with:

(a) all necessary co-operation in relation to the Agreement; and

(b) all necessary access to such information as may be required by Capita,

in order to enable Capita to discharge its obligations under the Agreement;

6.4.3 carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the Parties, Capita may adjust any agreed timetable or delivery schedule as reasonably necessary;

6.4.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Capita, its sub-contractors and agents to perform their obligations under the Agreement;

6.4.5 ensure that its network and Customer Systems comply with the relevant specifications provided by Capita from time to time;

- 6.4.6 be solely responsible for procuring and maintaining any network connections and telecommunications links from its Customer Systems to the Capita IT Systems, and all problems, conditions, delays, delivery failures and for all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet;
- 6.4.7 ensure that its personnel are adequately trained in the correct use of the Product(s) and are provided with first line technical support in connection with use of the Product(s);
- 6.4.8 comply with Capita's reasonable instructions concerning the use, modification, control, and testing of the Product(s) (including, where appropriate, operational and environmental conditions);
- 6.4.9 provide Capita, its employees, agents, consultants and subcontractors, with timely access to Customer Systems, Customer's personnel and Customer's Sites and other premises, office accommodation and other facilities (including those of any applicable Hosting Providers) as reasonably required by Capita to provide the Services;
- 6.4.10 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; and
- 6.4.11 keep a complete and accurate record of the Customer's copying and disclosure of the Product(s) and its users (including all Authorised Users);
- 6.4.12 keep and maintain all materials, equipment, documents and other property of Capita ("**Capita Materials**") at Customer's premises in safe custody at its own risk, maintain the Capita Materials in good condition until returned to Capita, and not dispose of or use the Capita Materials other than in accordance with Capita's written instructions or authorisation. All Capita Materials are the exclusive property of Capita; and
- 6.4.13 provide parking for Capita's engineers when requesting onsite assistance.
- 6.5 If Customer becomes aware of any misuse of the Product(s), any Content or the Documentation, or any security breach in connection with the Agreement that could compromise the security or integrity of the Product(s), any Content or the Documentation or otherwise adversely affect Capita, Customer shall, at Customer's expense, promptly notify Capita and fully cooperate with Capita to remedy the issue as soon as reasonably practicable.
7. **SUPPORT SERVICES AND OTHER PROFESSIONAL SERVICES.**
- 7.1 Capita offers different levels of Support Services for its Products, as described in the Product Order (or applicable Product Terms). Support Services may be subject to separate charges. Customer grants (or shall procure the grant of) a licence to Capita to utilise such information, services, materials or assets of Customer to the extent required for the provision of any Support Services provided pursuant to the Product Order.
- 7.2 Where the Product Order specifies that Capita shall perform Professional Services, such Professional Services shall be deemed to be performed under and governed by the Agreement. Unless otherwise specified in the Product Order, Customer is responsible for installing and configuring Products for its use.
- 7.3 From time to time Capita may recommend its authorised resellers, partners and other third parties to Customer, or Customer may elect to have other third parties, to provide Customer certain professional services, such as installation, configuration, consulting, and training, in connection with the Product(s) ("**Third Party Services**"). If Customer chooses to procure Third Party Services, Customer acknowledges and agrees that Capita shall have no responsibility or liability for the performance of the Third Party Services by the Third Party Services provider, or for any



defect or failure of the Product(s) caused by the Third Party Services and Customer shall not be entitled to any reduction in fees for the Product(s) as a result thereof. Capita may deny access to the Product(s) to any Third Party Services provider which Capita reasonably determines poses a security or confidentiality risk to Capita's, or its other customers', systems, data or Intellectual Property Rights.

7.4 If there is a change in law and Customer notifies Capita that such change requires a change to a Product, 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.

7.5 Capita shall be entitled to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of the provision of the Services under the Agreement.

7.6 Capita shall have no obligation to provide Support Services:

7.6.1 outside of any specified Support Hours;

7.6.2 if despite reasonable efforts by Capita, the problem cannot be replicated or otherwise identified;

7.6.3 for altered, damaged, misused or modified Products (other than such altered or modified Products as have been altered or modified in accordance with Capita's written directions to Customer);

7.6.4 for problems caused by Customer's and/or its Authorised User's negligence, hardware malfunction or breach of the Agreement;

7.6.5 for problems caused by issues that are outside of Capita's control (such as connectivity, network and band width

issues and issues with Third Party Services and Hosting Providers); or

7.6.6 in respect of faults that arise from (or their extent or impact is worsened by):

(a) failure to maintain the necessary environmental conditions and/or minimum equipment specifications for use of the Product(s) (if any) made available by Capita;

(b) use of the Product(s) in combination with any equipment or software not provided by Capita or not designated by Capita for use with the Product(s), or any fault in any such equipment or software;

(c) having the Product(s) maintained by a third party unless otherwise agreed in writing by Capita;

(d) any modification made to the Product by someone other than Capita;

(e) any design issues, data loading/interfaces and/or custom code changes caused by someone other than Capita; or

(f) in relation to Saal Products:

(i) changing the platform on which the Product runs, relocation of relevant equipment, re-hosting to new equipment or connection or interfacing of the Product with any with any other software (unless Capita performed the interfacing or interconnection); or

(ii) failure by Customer to install and run a Maintenance Release in accordance with the Agreement.

7.7 If Capita agrees to provide support where any circumstances in Section 7.6 above have arisen, Capita may charge additional fees for

- such support. Such support shall be deemed to be Professional Services and shall be subject to Professional Services Terms and the Professional Services section in the Product Order.
- 7.8 If the Support Services for a Product expire or are terminated whilst the Usage Period for that Product continues, and Customer wishes to have such Support Services reinstated, Capita may apply reinstatement fees in addition to the standard fees for such Support Services.
- 7.9 Capita may, on prior notice to Customer, make changes to the Services, provided such changes do not have a material adverse effect on Customer's business operations.
8. **FEES AND TAXES.**
- 8.1 In consideration for the Usage Rights granted under the Agreement, Customer agrees to pay Capita the fees set forth in the Product Order (including any Licence Fees, Support Fees, Hosting Fees and Professional Services Fees).
- 8.2 All sums payable under the Agreement are exclusive of VAT or any relevant local sales taxes, for which Customer shall be responsible, and which shall be added to Capita's invoices at the appropriate rate.
- 8.3 Any payments made by or due from Customer under the Agreement shall be free and clear of all taxation whatsoever save only for any deductions or withholdings required by law. If any deductions or withholdings are required by law, Customer shall be liable under this Section 8.3 to pay to Capita such further sums as will ensure that the aggregate of the sums paid or payable under the Agreement shall, after deducting therefrom all deductions or withholdings from such sums, leave Capita with the same amount as it would have been entitled to receive in the absence of any such deductions or withholdings.
- 8.4 The Parties shall use commercially reasonable efforts to do all such acts and things and to sign all such documents as will enable them to minimise the amount of any withholding tax obligation. In the event there is no applicable double taxation agreement or treaty, or if an applicable double taxation agreement or treaty reduces but does not eliminate such withholding or similar tax, the paying Party shall pay such withholding or similar tax to the appropriate government authority.
- 8.5 Unless otherwise set out in the Product Order or applicable Product Terms, all fees and expenses are to be paid to Capita in Pounds Sterling, by electronic transfer of funds to an account designated by Capita, or by such other means as Capita may agree to. Capita's invoices are due and payable in full within thirty (30) days from the date of the invoice. If Customer does not pay an undisputed Capita invoice in full within thirty (30) days after the invoice date, in addition to any other rights or remedies of Capita, whether at law, in equity or under the Agreement (including, without limitation, Capita's rights to terminate the Agreement), Capita may:
- 8.5.1 add an interest charge to the outstanding balance at the rate of four percent (4%) per annum above Barclays Bank Plc's current base rate from time to time; this interest will begin to accrue on the day after the payment due date and will accumulate on the outstanding balance on a daily basis until paid in full;
- 8.5.2 if such failure continues for fourteen (14) days following written notice thereof, suspend performance of Services and/or, where applicable, access to SaaS Products until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such suspension; and
- 8.5.3 in respect of SaaS Products that are hosted by Customer or a Hosting Provider appointed by Customer, repossess any Restricted Item and the Customer irrevocably agrees to allow, or shall procure the right for, Capita to enter the premises at which the Restricted Items are located for such purpose.

An invoice shall not be deemed disputed unless Customer is acting in good faith and has raised a bona fide dispute in relation to such invoice.

- 8.6 All invoices issued to Customer pursuant to the Agreement shall be transmitted electronically to Customer, and Customer hereby acknowledges and agrees to the sufficiency of receiving such invoices electronically.
- 8.7 Unless explicitly stated otherwise in the Product Order or applicable Product Terms, Capita may, at its sole discretion and with effect from each anniversary of the Agreement Effective Date, increase the then current fees under the Product Order (including any Licence Fees, Support Fees, Hosting Fees and/or any Professional Services rates) by a percentage equal to the average percentage increase in the Retail Price Index published by the Office for National Statistics (or its replacement index) during the twelve (12) month period preceding the date of notice of the adjustment, provided that the rate of increase shall always be zero percent (0%) or greater. Any such increase shall be notified to Customer at least sixty (60) days prior to the date any fee adjustment takes effect.

**9. CONFIDENTIALITY.**

- 9.1 Each Receiving Party recognises and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party's business and that neither Party would enter into the Agreement without assurance that such information and its value will be protected as provided in this Section 9 and elsewhere in the Agreement. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
- 9.1.1 not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;
- 9.1.2 not use or permit the use of any of the Disclosing Party's Confidential Information, directly or indirectly, in

any manner to the detriment of the Disclosing Party or to obtain any competitive advantage over the Disclosing Party;

- 9.1.3 except as may be permitted by and subject to its compliance with Section 9.1.6 below, not disclose or permit access to Confidential Information other than to its personnel and professional and legal advisers ("**Representatives**") who:
- (a) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement;
- (b) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9; and
- (c) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;
- 9.1.4 safeguard the Confidential Information from unauthorised use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
- 9.1.5 ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' noncompliance with, the terms of this Section 9; and
- 9.1.6 notify the Disclosing Party in writing promptly of any unauthorised disclosure or use of the Disclosing Party's Confidential Information and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights, and other rights therein.

- 9.2 Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records:
- 9.2.1 was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with the Agreement;
  - 9.2.2 was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with the Agreement;
  - 9.2.3 was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or
  - 9.2.4 was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.
- 9.3 If the Receiving Party or any of its Representatives are required to disclose the Disclosing Party's Confidential Information in response to a valid order of a court or other valid governmental or regulatory authority of competent jurisdiction, the Receiving Party agrees to give the Disclosing Party reasonable advance notice of the required disclosure (if legally permitted to do so) in order to afford the Disclosing Party a reasonable opportunity to contest the disclosure or seek a protective order, and the Receiving Party agrees to reasonably cooperate with the Disclosing Party's efforts.
- 9.4 The Receiving Party's obligations of confidentiality shall apply with respect to any particular Confidential Information of the Disclosing Party while any copy of it remains in the Receiving Party's possession or control, and thereafter for a period of two (2) years.
- 9.5 Upon the termination of the Agreement, the Receiving Party will cease all use of the Disclosing Party's Confidential Information in the form originally furnished and destroy it or, at the Disclosing Party's direction and expense, return it to the Disclosing Party.
- 9.6 Notwithstanding anything to the contrary in this Section 9, Capita may:
- 9.6.1 include Customer's name on Capita's customer list and may describe in general terms the nature of the services provided by Capita to Customer; and
  - 9.6.2 disclose Customer's Confidential Information and the contents of the Agreement with its Affiliates and any purchaser or potential purchaser of all or substantially all the assets or shares of Capita, provided such purchaser or potential purchaser has been informed of the confidential nature of the Confidential Information and is bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9.
10. **REPRESENTATIONS AND WARRANTIES.**
- 10.1 Each Party represents to the other Party that:
- 10.1.1 it has all necessary power and authority to enter into the Agreement; and
  - 10.1.2 the Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.
- 10.2 Capita warrants that the SaaS Product(s) (excluding any Maintenance Releases and New Versions made available to Customer from time to time, which shall not benefit from the warranty set forth in this Section 10.2, but which shall be supported in accordance with any applicable Support Services that Capita has agreed to provide to Customer pursuant to a Product Order) will perform in accordance with their respective Documentation in all material respects for thirty (30) days following delivery. The warranty shall not apply:

10.2.1 if the SaaS Product is not used in accordance with the Documentation;

10.2.2 if the defect is caused by:

- (a) a modification (other than a modification provided by Capita);
- (b) Customer; or
- (c) third party software;

10.2.3 to any Customer unlicensed activities; or

10.2.4 if the defect is caused by a failure by Customer to install and run a Maintenance Release in accordance with the applicable Product Terms.

Provided Customer notifies Capita in writing with a specific description of the SaaS Product's non-conformance within the warranty period referenced above and Capita validates the existence of such non-conformance, Capita's sole obligation and Customer's exclusive remedy will be for Capita to use reasonable efforts to correct the failure of the affected SaaS Product to operate as warranted, at no charge to Customer. If Capita is unable to cure a breach of this warranty after using reasonable commercial efforts, Customer's exclusive remedies will be to terminate its licence for the affected SaaS Product in accordance with Section 11.1.3(a) below, and receive a refund of any unused prepaid fees received for such Product less an amount that reflects Customer's use and benefit derived from the Product prior to the date of such termination assuming a useful life of five (5) years).

10.3 Capita warrants that it will perform the Support Services in a professional and workmanlike manner consistent with generally accepted industry practices.

10.4 Capita warrants that, in respect of any Professional Services provided by Capita under the Agreement, the relevant Deliverables will conform in all material respects with the descriptions set forth in the Product Order. Provided Customer notifies Capita in writing with a specific

description of any non-conformity of the Deliverables in breach of the warranty set out in this Section 10.4 within thirty (30) days of delivery of the applicable Deliverables, Capita's sole obligation and Customer's exclusive remedy will be for Capita to re-perform such deficient Professional Services in order to provide conforming Deliverables, and if Capita then fails again to provide the Deliverables as warranted, Customer, as its exclusive remedy, shall be entitled to recover the fees paid to Capita for such non-conforming Deliverables.

10.5 Customer assumes all risks associated with its selection and use of the Product(s), Documentation, Deliverables and Content to meet its needs. Customer acknowledges that it is solely responsible for the results obtained from use of the Product(s), Documentation, Deliverables or Content, including the completeness, accuracy, and content of such results, and the conclusions drawn from such use. Capita does not represent or warrant that the Product(s), Documentation, Deliverables or Content will meet the requirements or business needs of Customer or its Listed Affiliates, that the Products', Documentation's, Deliverables' or Content's operation will be uninterrupted or error-free, or that all defects will be corrected. Except as expressly provided in the Agreement, to the maximum extent permitted by applicable law, all warranties, representations, conditions or other terms which might have effect between the Parties or be implied or incorporated into the Agreement, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for particular purpose or the use of reasonable care and skill. Capita excludes all liability and indemnification obligations for any harm or damage caused by any Hosting Providers or by any other providers of Third Party Services or Content.

10.6 Customer warrants, represents and undertakes to Capita that:

10.6.1 it (or the applicable Customer Group Member) has all rights and licenses necessary for it to grant the licences set forth in the Agreement and to

submit, post or display the Customer Data on the Product(s); and

10.6.2 the hosting and display of such Customer Data by Capita (or any third party on behalf of Capita) shall not infringe the Intellectual Property Rights or any other rights of a third party.

which breach is irremediable or (if such breach is remediable) where Capita fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or

(b) if an Insolvency Event affecting Capita occurs.

## 11. **USAGE PERIODS AND TERMINATION.**

11.1 Unless otherwise agreed to by the Parties in writing, the Agreement and the Usage Rights it grants will terminate or may be terminated as follows:

11.1.1 The Usage Rights to any particular Products will expire automatically at the end of the applicable Usage Period if not renewed in accordance with the Agreement.

11.1.2 In addition to any termination rights Capita may have under the Product Order, the applicable Product Terms and Section 3.4, Capita may terminate the Agreement (in whole or in part) for cause:

(a) if Customer commits a material breach of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

(b) Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment; or

(c) if an Insolvency Event affecting Customer occurs.

11.1.3 Customer may terminate the Agreement for cause:

(a) upon thirty (30) days' written notice to Capita of a material breach of the Agreement relating to the Product(s) or Services

11.2 Without prejudice to the Parties' other rights under the Agreement, where the Product Order has a Usage Period, Support Period, Hosting Period or any other period during which services are provided by Capita to Customer ("**Relevant Period**") that automatically renews at the end of the initial or any renewal period of such Relevant Period, either Party may terminate the applicable Relevant Period at the end of the initial period or then current renewal period (as applicable) of such Relevant Period by providing not less than thirty (30) days' notice to the other Party prior to the end of the initial or then current renewal period (as applicable) of such Relevant Period.

11.3 Where Capita has a right to terminate the Agreement, Capita may, at its option, elect to terminate only a particular category or categories of Services. Where Capita elects to terminate only a particular category or categories of Services, such partial termination shall not automatically affect the continuation of the Usage Rights for the applicable Product(s) for the remainder of the applicable Usage Period.

11.4 Termination of the Agreement does not free either Party from its obligations to comply with all terms of the Agreement that contemplate performance prior or subsequent to the termination date and shall not prejudice any rights of either Party which have arisen on or before the date of termination.

11.5 Other than as set out in Section 11.1 above or as otherwise specified in the Product Order or applicable Product Terms, the Agreement will be non-cancellable by Customer and the associated fees will be non-refundable.

11.6 On termination of the Agreement (or part thereof):

11.6.1 all applicable Usage Rights granted to Customer shall cease, unless such Usage Rights have been granted on a perpetual basis;

11.6.2 all applicable Services shall cease;

11.6.3 Customer will immediately cease to use or access the applicable Product(s) and will promptly uninstall and securely erase all copies so that they cannot be recovered. Upon request by Capita, Customer will certify in writing that it has done so;

11.6.4 Customer shall immediately pay to Capita any applicable sums due to Capita;

11.6.5 each Party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) relating to the applicable Product(s) and/or Services and belonging to the other Party, save that Customer may retain a copy of Documentation relating to any Products for which Customer has perpetual Usage Rights;

11.6.6 Capita may destroy or otherwise dispose of any of Customer Data in its possession relating to the applicable Product(s) and/or Services, unless Capita receives, no later than ten (10) days after the effective date of the termination, a written request for the delivery to Customer of the then most recent back-up of Customer Data. Capita shall use reasonable commercial endeavours to deliver the back-up to Customer within thirty (30) days of its receipt of such a written request, provided that Customer has, at that time, paid all applicable fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). Customer shall pay all reasonable expenses incurred by Capita in returning or disposing of Customer Data; and

11.6.7 Customer shall return all of the Capita Materials and any hardware relating to the applicable Product(s) and/or

Services which have not been fully paid for. If Customer fails to do so, then Capita may enter Customer's premises and take possession of them. Until they have been returned, Customer shall be solely responsible for their safe keeping and will not use them for any purpose.

## 12. **LEGAL COMPLIANCE.**

12.1 Each Party covenants that it will perform all activities under or pursuant to the Agreement in accordance with all applicable legal requirements.

12.2 Without limiting the generality of Section 12.1 above, Customer represents and warrants that it will cause all personnel who will be given access to the Product(s), Documentation, Deliverables or Content to be familiar with all applicable Laws relating to bribery and corruption, including the UK Bribery Act 2010, and Customer represents and warrants to Capita that Customer and such personnel will not violate any such laws in connection with their activities under or relating to the Agreement, and that they will take no actions on behalf of or in relation to Capita or the Product(s), Documentation, Deliverables or Content that would subject Capita to liability under any such laws.

## 13. **INTERPRETATION AND DISPUTES.**

13.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the law of England and Wales.

13.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

13.3 Other than variations made in accordance with Paragraph 2 of Part G of the Product Order, no variation of the Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of both Parties.

- 13.4 Before the Parties resort to litigation to solve any dispute, the Parties agree to schedule a mandatory meeting either remotely (for example, via teleconference) or at a mutually agreeable location, within ten (10) days of the date a Party gives notice of the dispute to the other Party, which meeting will be attended by a senior official of each Party. At that meeting, each Party will present its side of the dispute, and the senior officials will enter into good faith negotiations in an attempt to resolve the dispute. In the event the matter is not so resolved at such meeting or if the meeting does not take place within ten (10) days of the date a Party gives notice of the dispute to the other Party, the Parties reserve all applicable rights and remedies under the Agreement or available at law or in equity. Nothing in this Section 13.4 shall prevent Capita from seeking any interim or interlocutory relief.
- 13.5 If any provision or part provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity and enforceability of the other provisions of the Agreement. If any provision or part provision of the Agreement is deemed deleted under this Section 13.5 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.6 Any term or condition of the Agreement which expressly or by implication is required for the interpretation of the Agreement or necessary for the full observation and performance by each Party of all rights and obligations arising prior to the date of expiration or termination shall survive the expiration or termination of the Agreement for any reason.
14. **GENERAL.**
- 14.1 The relationship of the Parties under the Agreement is that of independent contractors. Nothing in the Agreement is intended to, or shall be deemed to, make Capita and Customer partners, joint venturers or otherwise associated in or with the business of the other. Neither Party is authorised to incur debts or other obligations of any kind on the part of or as agent for the other, or to make or enter into any commitments for or on behalf of the other Party.
- 14.2 Customer may not assign, delegate, or transfer the Agreement, in whole or in part, or any of its rights or duties hereunder without the written consent of Capita. For the purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganisation involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under the Agreement for which Capita's prior written consent is required. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under the Agreement. Any attempted assignment, delegation or transfer by Customer in violation of this Section 14.2 is void. The Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors or permitted assigns.
- 14.3 Capita may at any time assign, delegate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 14.4 All notices and other communications required or permitted hereunder must be in writing and sent to the addresses set out in the Product Order and will be deemed to have been duly given:
- 14.4.1 when delivered by hand with a copy provided by another means specified in this Section 14.4;
- 14.4.2 one (1) day after delivery by receipted overnight delivery; or
- 14.4.3 three (3) days after being posted by certified or registered post, proof of postage requested, with postage prepaid to the Party at the address set forth in the Product Order, or to such address as either Party shall furnish to the other Party in writing, pursuant to this Section 14.4.
- 14.5 No failure or delay by a Party to exercise any



- right of remedy provided under the Agreement or by law shall constitute a waiver of that or any other rights or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 Neither Party shall be in breach of the Agreement nor liable for failure or delay in the performance of its obligations hereunder as a result of a force majeure event, such as fire, explosion, act of nature, strikes, war, riot, government regulation or act or any other cause beyond the reasonable control of such Party, provided that:
- 14.6.1 the affected Party and its representatives and agents are without fault in causing or failing to prevent the force majeure event;
- 14.6.2 the affected Party gives the other Party prompt written notice of the force majeure event and uses its best efforts to overcome or circumvent it, including through the use of commercially reasonable alternative sources, workaround plans or other means; and
- 14.6.3 the affected Party continues to use its best efforts to perform whenever and to whatever extent is possible under the circumstances and notifies the other Party promptly when the force majeure event has abated.
- 14.7 Each Party will do and execute, or arrange for the doing or executing of, each necessary act, document and thing that is reasonably necessary to give effect to any of the Parties' rights under the Agreement.
- 14.8 Except as expressly provided in the Agreement, all rights, remedies and powers of the Parties hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers to which it may be entitled by law.
- 14.9 The captions and headings used in the Agreement are used for convenience only and are not to be given any legal effect.
- 14.10 A person who is not a Party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, except for an Affiliate of Capita or a Listed Affiliate of Customer for the purpose only of enforcing its rights under the indemnities in the Agreement granted in its favour. The rights of the Parties to rescind or vary the Agreement are not subject to the consent of any other person.
- 14.11 Subject to the limits of liability set out in the Product Order, each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Customer further agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Capita regarding future functionality or features.
- 14.12 Save as explicitly stated elsewhere in the Agreement, in the event of a conflict or inconsistency between the provisions of the components of the Agreement, then the following order of precedence shall apply: (
- 14.12.1 the Product Order's terms and conditions shall take precedence over any other component of the Agreement; then
- 14.12.2 the Product Terms; then
- 14.12.3 the Professional Services Terms; and then
- 14.12.4 the Master Terms.