

Capella

SaaS Terms and conditions
Platform for Hybrid

These terms and conditions (Terms and Conditions) are a legally binding contract between the Customer (you, yours) and Capella Workplace Solutions Limited (a company registered in Ireland with company number 671402) (Capella, we, us and our).

If you are agreeing to these Terms and Conditions not as an individual but on behalf of an entity or organisation, then “you” means that entity or organisation, and you acknowledge that you are binding that entity or organisation to these Terms and Conditions.

Please read these Terms and Conditions carefully. By Executing the Order Form or using or accessing the Products, Goods and Services, you acknowledge that you have read, understand and agree to follow and be bound by these Terms and Conditions.

These Terms and Conditions incorporate the Data Security and Privacy Addendum attached to this Agreement.

1. Contract structure

1.1. The terms of engagement for the provision of the Products, Goods and Services to the Customer will be set out in:

- a) an Executed order form (Order Form);
- b) any subsequent Executed order forms that amend the Order Form (Supplementary Order Form).

Upon Execution, the Order Form (as amended by any Supplementary Order Forms) will incorporate these Terms and Conditions and the Capella’s Documentation (as updated from time to time and available on the Capella Platform or otherwise attached to the Order Form or Supplementary Order Forms) and take effect as a binding agreement (Agreement).

1.2. Any new features, tools or Software which are added to the Products, Goods and Services (including any Updates under clause 6) will also be subject to the Agreement.

1.3. Each party must perform its obligations under the Order Form in accordance with these Terms and Conditions and the terms of the Order Form. The parties must comply with any special conditions set out in the Order Form as may be amended by any Supplementary Order Forms (Special Conditions).

1.4. In the event of any inconsistency between these Terms and Conditions, the Order Form and any Supplementary Order Forms, the provisions will prevail in the following descending order:

- a) the Special Conditions (if any) in the most recent Supplementary Order Form followed by any other Supplementary Order Forms in descending date order, which must explicitly state which terms they replace in order to be valid;
- b) the Special Conditions (if any) in any Order Form, which must explicitly state which terms they replace in order to be valid;
- c) the remaining provisions of the most recent Supplementary Order Form followed by any other Supplementary Order Forms in descending date order;
- d) the remaining provisions of the Order Form;
- e) these Terms and Conditions; and
- f) the Capella Documentation

2. Term

- 2.1. The Agreement commences on the Commencement Date and continues for the Initial Term, unless terminated earlier in accordance with clause 14.
- 2.2. At the end of the Initial Term, the Agreement will be automatically extended for successive Renewal Terms unless:
 - a) either party provides written notice of its intention to cancel such automatic renewal:
 - i) no less than 90 days' prior to the commencement of the relevant Renewal Term;
 - ii) no less than 24 hours prior to the commencement of the relevant Renewal Term where the Initial Term is also a Trial Period; or
 - iii) such other period as specified in the Order Form (or any amending Supplementary Order Form); or
 - b) the Initial Period is extended through Execution of a new Order Form. If this occurs the previous Order Form will be taken to have been terminated on the day that the new Order Form is Executed; or
 - c) this Agreement is terminated earlier in accordance with clause 14.

3. Licence

- 3.1. Subject to clause 4 and the Terms and Conditions of this Agreement, including the Customer's payment of all, if any, relevant Fees and amounts under this Agreement, Capella grants to the Customer a non-exclusive, limited, non-sublicensable, non-transferable, revocable licence to access and use, and make available to its Personnel to use, in the Jurisdictions, the Products, Goods and Services during the Term in accordance with this Agreement. The Customer is liable for any access or use of the Products, Goods or Services outside the Jurisdictions in breach of this clause 3(a).
- 3.2. The licence set out in clause 3(a) vests in the Customer on the Commencement Date and endures for the duration of this Agreement except as otherwise specified in this Agreement.
- 3.3. Capella will:
 - a) assist with delivering or otherwise providing access to, and initial configuration and customisation (as applicable) of, the relevant Products, Goods and Services as required for the Customer to exercise its rights under clause 3(a) and as required pursuant to the Order Form, including by providing encryption keys, where applicable; and
 - b) provide the Customer with any Capella Documentation reasonably required to use the Products, Goods and Services.
 - c) Capella may engage a third-party service provider to assist in the delivery, installation, customisation or support of the Products, Goods and Services, as applicable.

4. Use of Products, Goods and Services

- 4.1. The Customer must promptly provide all information required by Capella to set up the Customer's Operating Environment.
- 4.2. The Customer must use, and must ensure that its Personnel use:
 - a) the Products, Goods and Services in accordance with the End User Licence Agreement for the Products, Goods and Services; and
 - b) the Goods in accordance with any instructions provided by Capella, when the Customer and/or its Personnel register to use the Products, Goods and Services.

- 4.3. All use by the Customer's Personnel and any other third party of the Products, Goods, and Services will be deemed to be use by the Customer for which the Customer remains liable.
- 4.4. The Customer must not, without Capella's prior written approval:
- a) use the Products, Goods and Services for a purpose other than the Authorised Purpose and in accordance with the Terms and Conditions of this Agreement;
 - b) copy or replicate, or directly or indirectly allow or cause a third party to copy or replicate, the whole or any part of the Products, Goods and Services;
 - c) use the Products, Goods and Services to assist in the conduct of the business of any third party;
 - d) modify, adapt or amend the Products, Goods and Services, or permit any third party to modify, adapt or amend the Products, Goods and Services;
 - e) disassemble, decompile, or reverse engineer (or permit any other person to do so) all or any parts of the computer programs or source code which form any part of the Products, Goods and Services (or attempt to do so) or take any other action intended to render any of the programs more amenable to human understanding or render the programs operational as to any other user who has not been authorised by Capella;
 - f) publicly disseminate information regarding the performance of the Products, Goods and Services; or
 - g) sub-license, rent, sell, lease, distribute or otherwise transfer the Products, Goods and Services or any part of them except as permitted under this Agreement.
- 4.5. The Customer is responsible for maintaining control over and access to its instance of, or account for, the Products, Goods and Services. The Customer must keep accurate, up-to-date records of each of the Customer's Personnel who access the Customer's instance of, or account for, the Products, Goods and Services.
- 4.6. The Customer must maintain the confidentiality of all login information and must not allow or authorise any person other than the Customer's Personnel to use the login information. The Customer must immediately notify Capella of any suspected or actual unauthorised access to or use of the login information.
- 4.7. The Customer must ensure there is only one end user per Capella Account. The Customer is responsible for any and all activities that occur on the Customer's instance of, or account for, the Products, Goods and Services, whether or not authorised by the Customer.
- 4.8. The Customer must not, and must ensure its Personnel do not, use the Products, Goods and Services (including through the upload of any Customer Material) in any way that:
- a) involves anything which is false, defamatory, harassing or obscene;
 - b) involves unsolicited electronic messages;
 - c) would involve the contravention of any person's rights (including Intellectual Property Rights);
 - d) may contravene any Laws;
 - e) could damage, disable or impair any part of the Products, Goods and Services;
 - f) may otherwise be regarded by Capella, on reasonable grounds, to be unacceptable (Capella may from time to time notify the Customer of the circumstances which it regards as unacceptable);
 - g) involves any fraudulent activity;

- h) involves any dealing with Personal Data in contravention of applicable Privacy Laws; or
- i) involves the sale or promotion of any illegal business activities or prohibited products, goods or services.

4.9. The Customer must comply at all times with the terms of any Third-Party Licences.

5. Fees, payment and VAT

5.1. Fees and payment

- a) Except as provided for in clause 5.1(b), the Customer must pay the Fees set out in each invoice, without set-off, abatement or deduction, in accordance with this clause 5 and in accordance with any specific invoicing arrangements specified in the Order Form. The Fees payable will be calculated by the methods specified in the Order Form.
- b) During the Initial Term and/or no later than 30 days prior to any Renewal Term, Capella may notify the Customer in writing of revisions to the Fees to take effect from the start of the next Renewal Term.
- c) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form:
 - i) invoices for Up-front Fees and Set-up Fees set out in the Order Form will be invoiced on the Commencement Date and the Customer must pay all such invoices immediately on receipt;
- d) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the Customer is on a Monthly Billing Cycle, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted monthly in advance and the Customer must pay all such invoices immediately on receipt.
- e) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the Customer is on a Quarterly Billing Cycle, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted:
 - i) quarterly in advance for the Quarterly Billing set out in section 10 of the Order Form; and
 - ii) monthly in arrears for the Monthly Adjustment and the Customer must pay all such invoices immediately on receipt.
- f) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the billing cycle is annually, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted
 - i) annually in advance for the Annual Billing set out in section 10 of the Order Form; and
 - ii) monthly in arrears for the Monthly Adjustment.
- g) and the Customer must pay all such invoices immediately on receipt.
- h) Any portion of the payments not paid by the Customer on or before the date that it is due shall accrue interest at a rate equal to the Bank of Ireland base rate plus 4% per annum, from the date such amount is due until payment is received in full by Capella.
- i) The Customer will pay the Fees through one of the payment methods specified in the Order Form, including by electing to authorise us to automatically deduct any Fees payable under clause 5.1(a) from a bank account, credit card or debit card nominated by the Customer on the date such amounts are due under clauses 5.1(d) - 5.1(h). If you

authorise us to make such deductions, we will do so each month until you tell us to stop by removing this as your preferred payment method in accordance with the notification process in clause 21. You are responsible for ensuring that sufficient funds are available on the relevant due date so that the appropriate deduction can be made. For the avoidance of doubt, if an attempted deduction is unsuccessful, the relevant amount will be considered to be unpaid and the payment clause in this document will be enlivened if it is not otherwise paid using a different payment method.

- j) If the Customer fails to make payment to Capella in respect of any Fees when due under clauses 5.1(d) - 5.1(h), the Customer acknowledges that Capella may suspend the provision of services, including access to the Products, Goods and Services, until such time as payment is made in full as per the invoice.

5.2. VAT

- a) If VAT is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of VAT payable on that supply.
- b) Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a VAT exclusive basis.
- c) In providing an invoice, a party shall provide proper tax invoices if VAT is applicable to the Fees.

6. Updates

6.1. From time to time, Capella may introduce Updates to the Products, Goods and Services.

6.2. Capella will provide the Customer with reasonable prior notice in advance of any Update which would, in the reasonable opinion of Capella, have a material detrimental impact on the Products, Goods and Services, unless security, legal, system performance or Third-Party Licence considerations or obligations require an expedited Update.

7. Support Services

- a) Capella shall provide any Support Services as specified in the Order Form.

8. Intellectual Property Rights

8.1. Ownership

- a) The Customer acknowledges and agrees that Capella owns or licenses:
 - i) all Intellectual Property Rights in the Products, Goods and Services; and
 - ii) any Developed Intellectual Property,
and nothing in this Agreement is intended to transfer ownership of or interest in any Intellectual Property Rights of Capella or any third party.
- b) To the extent that the Customer acquires ownership of any Intellectual Property Rights in the Developed Intellectual Property:
 - i) the Customer assigns, and shall procure that its Personnel assign, such Intellectual Property Rights to Capella;
 - ii) the Customer must, upon request by Capella, execute (and procure that its Personnel execute) any assignment or other document reasonably required to evidence or perfect Capella's ownership of such Intellectual Property Rights; and
 - iii) the Customer must provide all reasonable assistance requested by Capella to protect, defend and assert Capella's interests in such Intellectual Property Rights.

- c) the Customer must notify Capella immediately if it becomes aware of any:
 - i) unauthorised access to or use of the Products, Goods and Services;
 - ii) other breach of any of Capella's Intellectual Property Rights; or
- d) claim by any third party relating to Intellectual Property Rights in the Products, Goods and Services.
- e) The Customer agrees and acknowledges that it is solely responsible for any Customer Material.
- f) While Capella will seek to ensure that the Products, Goods and Services are as accurate as possible, the Customer acknowledges and agrees that:
 - i) Capella is not responsible for any Customer Material or other information input into the Products, Goods and Services by the Customer and/or its Personnel;
 - ii) it must ensure that all Customer Material that is input into the Products, Goods and Services is accurate, complete and up-to-date;
 - iii) it has sufficient rights to all Customer Material, to hold the Customer Material and input it to the Products, Goods and Services; and
 - iv) it has obtained from all individuals and third parties any required Consents and have provided all required notices with respect to the collection, retention, disclosure and use of the Customer Material as contemplated for the purposes of this Agreement that are required under applicable laws.
- g) The Customer, in the event that it discovers that any Customer Material input by it into the Products, Goods and Services is not accurate, complete or up-to-date, will promptly notify Capella and update the Customer Material.
- h) Capella reserves the right to modify, update, edit or delete Customer Material where it deems such Customer Material is a risk to the security, accuracy or integrity of the Products, Goods and Services, and may do so without prior written notice to the Customer, but will use reasonable endeavours to notify the Customer as soon as reasonably practical in the event of such deletion.
- i) The Customer must ensure that Customer Material, and its collection, use, processing, disclosure and dissemination via the Products, Goods and Services:
 - i) will not infringe any Intellectual Property Rights of any person; and
 - ii) complies with all applicable Laws (including Privacy Laws, where applicable).
- j) Notwithstanding any other clause in this Agreement, the Customer agrees that Capella will have the right to access, use, adapt, modify, reproduce, reformat, transform, and process Customer Material for the purpose of:
 - i) providing the Customer with the Products, Goods and Services;
 - ii) internal training; and
 - iii) testing, improving and developing new features for the Products, Goods and Services, and grants Capella a perpetual, royalty-free, worldwide, transferable, non-exclusive licence to do so, including the right to sub-license.

9. Variation

- 9.1. Capella may unilaterally amend these Terms and Conditions from time to time to reflect additions to the Products, Goods and Services offered, changes in market conditions, changes in technology used to provide the Products, Goods and Services under this

Agreement, changes in payment methods, changes in relevant laws and regulatory requirements and changes in the capabilities of Capella's system.

9.2. Capella will provide the Customer with reasonable prior notice of any amendment to these Terms and Conditions in writing.

10. Confidentiality and publicity

10.1. Confidentiality

- a) Each party
 - i) except as permitted under clause 10.1, must keep confidential all Confidential Information of the other party; and
 - ii) may use Confidential Information of the other party solely for the purposes of exercising its rights and performing its obligations under this Agreement and [page 6](#) otherwise for the purposes of this Agreement;
 - iii) may only disclose Confidential Information of the other party
 - (A) to persons which Control, or are Controlled by, the party, and the employees, legal advisors or consultants of such persons, in each case under corresponding obligations of confidence as imposed by this clause and only where such persons, employees, legal advisors or consultants of such persons have a need to know such information in connection with this Agreement;
 - (B) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or
 - (C) to the extent required by Law or pursuant to a binding order of a government agency or court.
 - (D) Capella may disclose Confidential Information of the Customer to the extent necessary in connection with a capital raising, financing, or transfer or divestiture of all or a portion of its business, or otherwise in connection with a merger, consolidation, change in control, reorganisation or liquidation of all or part of Capella's business, but will use reasonable efforts to minimise the scope of such disclosure.

10.2. Publicity

- a) Subject to clause 10.2(b) the Customer acknowledges and agrees the parties will not make any public announcement in relation to this Agreement without the prior written approval of the other party.
- b) The Customer acknowledges and agrees that Capella may:
 - i) disclose to third parties the fact that the Customer has entered into this Agreement with Capella, including by way of the use of the Customer's company logo; and
 - ii) use de-identified information about the Customer, in any marketing or other material used by Capella, including case studies regarding the Customer's involvement with Capella.
- c) The Customer grants to Capella a royalty-free, non-exclusive licence to use and display the Customer's logo on the Capella Website or in Capella's marketing materials for the

purpose of clause 10.2(b). The licence granted in this clause 10.2(c) survives termination of the Agreement for whatever reason.

11. Third Party Content

- 11.1. The Customer acknowledges that the Products, Goods and Services may incorporate Third Party Content including open source software and that Capella is not responsible for the accuracy, quality, integrity or reliability of the same.
- 11.2. To the extent permitted by Law (including the Consumer Law, if applicable), Capella does not give any representation or warranty as to the reliability, accuracy or completeness of any Third Party Content, including open source software, and Capella will have no responsibility or liability to the Customer or any other person arising from or in connection with any error, defect or inaccuracy in any Third Party Content.

12. Operating Environment

- 12.1. The Customer acknowledges that, except to the extent otherwise provided in this Agreement, it is solely responsible for establishing, providing or procuring, maintaining and supporting any Third Party Licences and any operating environment, facilities, equipment and telecommunications and internet connections necessary to use and obtain the benefit of the Products, Goods and Services (Operating Environment).
- 12.2. The Customer must ensure that the Operating Environment has the necessary specifications, features and third party software required to ensure compatibility with relevant parts of the Products, Goods and Services, as may be notified by Capella from time to time.

13. Force Majeure

- 13.1. Subject to the requirement to give notice under this clause, if the performance by any party (Affected Party) of all or any of its obligations under this Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations. This clause 13(a) shall not apply to payment obligations under clause 5.
- 13.2. The Affected Party must promptly, after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

14. Termination

- 14.1. Termination
 - a) Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:
 - i) the other party experiences an Insolvency Event;
 - ii) the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied,

fails to remedy the breach within 30 days after receiving written notice from the terminating party requiring it to do so; or

- iii) without limiting clause 14.1(a)(ii), the other party fails to comply with the obligations set out in clause 10 (Confidentiality and Publicity) or the Data Security and Privacy Addendum.

b) Capella may terminate this Agreement:

- i) on 60 days' written notice to the Customer for any reason;
- ii) immediately by written notice to the Customer in the event of any change (directly or indirectly) in a controlling interest or majority ownership of the Customer; or
- iii) immediately by written notice to the Customer if, subject to an invoice that has been disputed under clause 22, the Customer fails to pay any amount due under this Agreement, and does not pay within 14 days after receiving notice requiring the Customer to do so.

14.2. Consequences of termination

a) On expiration or termination of this Agreement for any reason, the Customer must immediately:

- i) stop using the Products, Goods and Services, and ensure that all of the Customer's Personnel stop using the Products, Goods and Services;
- ii) return to Capella (or, at Capella's direction, destroy) all copies of the Capella Documentation and any of Capella's Confidential Information in the Customer's possession or control;
- iii) return to Capella, at the Customer's cost, all Goods in a useable condition or otherwise Capella may charge the Replacement Fee for any unreturned Goods or for Goods returned in an unusable condition; and
- iv) allow Capella or Capella's nominee to access the Customer's premises and systems to enable Capella to de-install and remove relevant parts of the Products, Goods and Services (if applicable).

b) If Capella terminates this Agreement under clause 14.1(a)(ii) the Customer will pay Capella any unpaid Fees covering the remainder of the Term.

c) If the Customer terminates this Agreement under clause 14.1(a)(ii) Capella will refund the Customer any pre-paid Fees covering the remainder of the Term after the date of termination on a prorata basis.

d) Termination of this Agreement shall not relieve the parties of any accrued liability (including with respect to outstanding or accrued Fees).

15. Warranties

15.1. The Customer warrants that:

- a) it has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
- b) it will act in good faith towards Capella and any of Capella's authorised representatives and provide such assistance and co-operation as is practicable on request by Capella; and

- c) it will comply at all times with applicable Laws and regulations, and all reasonable directions Capella gives.

15.2. The Customer will be solely responsible for any representations, warranties or guarantees made or published concerning the Products, Goods and Services by the Customer to the extent that such representations, warranties or guarantees are inconsistent with any warranties in this Agreement.

15.3. Capella warrants that:

- a) it has the authority to enter into and perform its obligations under this Agreement and that this Agreement is a legal, valid and binding Agreement;
- b) it has all rights necessary to grant access to the Products, Goods and Services;
- c) it will comply at all times with applicable Laws; and
- d) it will not do anything or make any statement that could be reasonably expected to harm the reputation of the Customer.

16. Disclaimer

16.1. The Customer acknowledges and agrees that, to the extent permitted by Law (including the Consumer Law if applicable), the Products, Goods and Services are made available "as is" and Capella makes no representation, warranty or guarantee:

- a) as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any content contained in or generated by the Products, Goods and Services;
- b) that the use of the Products, Goods and Services will be secure, timely, uninterrupted or error-free;
- c) that the Products, Goods and Services will operate in combination with any other hardware, software, platform, or Customer Material;
- d) that the Products, Goods and Services will meet the Customer's requirements or expectations;
- e) that any stored Customer Material will be accurate or reliable or that any stored Customer Material will not be lost or corrupted;
- f) errors or defects will be corrected;
- g) that the Products, Goods and Services, and information extracted from them, will be accurate, free from defects, bugs, errors or omissions, or that any Customer Material input into the Products, Goods and Services will not be lost or corrupted; or
- h) in relation to non-infringement, title, fitness for a particular purpose, functionality, availability or merchantability.

16.2. Without limiting any other provision of this Agreement, to the extent permitted by Law (including the Consumer Law if applicable), Capella does not make any representation, warranty or guarantee:

- a) that servers used to make a hosted component of the Products, Goods and Services available are free of viruses or other harmful components; or
- b) in respect of the availability or uptime of any hosted component of the Products, Goods and Services due to scheduled or unexpected maintenance, system downtime or outages or other interruptions.

- 16.3. Capella shall not be liable for delays, interruptions, service failures and other problems inherent in use of the internet and electronic communications or other platforms outside the reasonable control of Capella, including third party hosting providers.
- 16.4. Capella disclaims all liability in respect of the results of any verification of identity performed using the Products, Goods and Services, including to the extent that such verification relies on the accuracy or completeness of any Customer Material.
17. Indemnities without limiting any other indemnities given by the Customer under this Agreement, the Customer shall defend, hold harmless and indemnify Capella and its Affiliates and Personnel (the Capella Indemnified Parties) from and against any Loss suffered or incurred by the Capella Indemnified Parties arising out of or in connection with:
- 17.1. any breach by the Customer of clauses 3(a) (Licence), 4 (Use of the Products, Goods and Services), 8 (Intellectual Property Rights), 10 (Confidentiality and Publicity) or the Data Security and Privacy Addendum;
- 17.2. the performance, or failure to perform, of the Products, Goods and Services associated with any deficiency or inadequacy of the Customer's Operating Environment;
- 17.3. any Customer Material (including Personal Data used or disclosed by the Customer, including any claim by any person that Customer Material infringes any Intellectual Property Right or other right (including privacy rights) of such person or any third party;
- 17.4. the use of the Products, Goods and Services by the Customer and its Personnel;
- 17.5. any fraud, wilful misconduct or negligence by the Customer or its Personnel; or
- 17.6. any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of the Customer.
18. Limitation of Liability
- 18.1. To the extent permitted by Law, (including the Consumer Law if applicable), and subject to clause 18(c), no liability is accepted in relation to a Trial of the Products, Goods and Services and in no event will the aggregate liability of Capella for any Loss, direct or otherwise, exceed an amount either that is equivalent to the Fees paid by the Customer to Capella in the Contract Year in which the event giving rise to the liability occurred, regardless of the cause or form of action. For the avoidance of doubt, the limitation of liability under this clause 18(a) is cumulative and not per incident and applies to the indemnity provided in clause 8.1(d).
- 18.2. To the extent permitted by Law, (including the Consumer Law if applicable), under no circumstances will either party be liable for any Consequential Loss, except to the extent arising page 9 from a breach by the Customer of its obligations under clauses 8, 10 and the Data Security and Privacy Addendum.
- 18.3. Clause 18(a) does not apply to, and shall not limit, any party's liability:
- a) for death or personal injury caused by that party or its Personnel;
 - b) for fraud (including fraudulent misrepresentation); or
 - c) under any indemnity given in this Agreement, except for in clause 8.1(d).
19. Assignment

The Customer must not sub-license, assign or novate, directly or indirectly, or attempt to sub-license, assign or novate, any of its rights or obligations under this Agreement without the prior

written consent of Capella. Capella may assign or subcontract all or part of this Agreement to any other party.

20. Survival

Without limiting any other provision of this Agreement, clauses 5 (Fees, payment and VAT), 8 (Intellectual Property Rights), 10 (Confidentiality and publicity) and 18 (Limitation of liability), and the Data Security and Privacy Addendum and any other clauses which should by their nature survive termination of this Agreement, survive termination or expiry of this Agreement for any reason.

21. Notices

21.1. Subject to clause 21(b), a party giving notice or notifying under this Agreement must do so in English and in writing:

- a) in the case of Capella, addressed to the CEO at The Media Cube, IADT, Kill Avenue, Dun Laoghaire, Co Dublin A96 X6 X3, or, in the case of the Customer, to the person and address supplied in the Order Form or as altered by any notice; and
- b) hand delivered or sent by prepaid post to that address.

21.2. For the purposes of service messages and notices about the Products, Goods and Services, including notices under clause 6, notice may consist of:

- a) an email from Capella to an email address associated with the Customer's account; or
- b) A pop-up notification to the Administrator Account in the Capella App, even if Capella has other contact information. The Customer acknowledges and agrees that Capella shall have no liability associated with or arising from the Customer's failure to maintain accurate contact or other information, including, but not limited to, the Customer's failure to receive critical information about the Products, Goods and Services.
- c) A notice given in accordance with this clause is taken to be received:
 - i) if hand delivered, on delivery;
 - ii) if sent by prepaid post, three (3) days after the date of posting;
 - iii) if sent by email under clause 21(b), at the time of sending the email.

22. Dispute resolution

22.1. If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case a nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. In the event that the parties are unable to resolve the dispute within 60 days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (Senior Executive) of that party.

22.2. If the parties are unable to resolve the dispute within 14 days following referral to the Senior Executive of the relevant parties, then the parties must seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in Dublin, Ireland unless all three arbitrators mutually agree on an alternative city. The arbitration rules will be the Ireland Court of International Arbitration Rules.

22.3. Nothing in this clause 22, shall prevent a party from seeking urgent injunctive relief before an appropriate court with respect to a violation of Intellectual Property Rights,

confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

23. General

- 23.1. Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.
- 23.2. This Agreement contains the entire agreement between the parties with respect to its subject matter. Neither of the parties has relied on or is relying on any other representation in entering into this Agreement.
- 23.3. Except where expressly stated otherwise, any express statement of a right of a party under this Agreement is without prejudice to any other rights of that party expressly stated in this Agreement or existing at Law.
- 23.4. Nothing in this Agreement gives a party any right to bind the other party in contract or otherwise at Law, page 10 or hold itself out as a representative of the other party.
- 23.5. Each party must take all steps as may be reasonably required by the other party to give effect to the Terms and Conditions of this Agreement and transactions contemplated by this Agreement.
- 23.6. Subject to clause 9, this Agreement may be amended only by another written agreement executed by all the parties.
- 23.7. The Customer will be fully responsible to Capella for any Loss suffered by Capella or its Personnel arising from or in connection with the acts or omissions of its sub-contractors, contractors, assigns and all their employees, as if they were the acts and omissions of the Customer.
- 23.8. No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 23.9. The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
- 23.10. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 23.11. Each party must bear its own costs arising out of the negotiation, preparation and Execution of this Agreement.
- 23.12. This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the Laws of Ireland. In relation to such matters, each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.
- 23.13. This Agreement may be Executed in any number of counterparts and by electronic means. All counterparts will be taken to constitute one agreement.

24. Third Party Beneficiaries

24.1. Aside from Affiliates of Capella, there are no third-party beneficiaries under this Agreement.

25. Definitions and interpretation

25.1. Definitions

The following definitions apply unless the context requires otherwise.

Administrator Account means the account of the Customer's chosen administrator, who is given oversight of the Customer's platform and users.

Affiliate means an entity that has the ability either directly or indirectly to Control another entity, via ownership of more than fifty percent of the voting rights, or an entity that holds more than a fifty percent interest in a joint venture over which either party's Control over the joint venture is set out in writing, for as long as such Control exists.

Annual Billing Cycle means where invoicing on an annual basis has been selected in the Order Form. **Authorised Purpose** means the Customer's use of the Products, Goods and Services for the purpose of recording Personnel Data and using this Data:

- to determine office real estate needs;
- to allow booking of and/or checking in to available desks, office space and meeting rooms;
- to provide detailed management information around company processes, associated costs and employee activities including well-being;
- to locate and/or to check in to available desks using the Goods;
- for any other purpose set out in a schedule to this Agreement or in an attachment to the Order Form; or
- as the ordinary use of any additional features would permit provided as Updates to the Software by Capella from time to time.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place of incorporation of Capella.

Commencement Date means the commencement date specified in the Order Form.

Confidential Information means all information of a confidential or proprietary nature, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement. Specifically, Capella's Confidential Information includes the design, specification and content of the Products, Goods and Services, including its source code, Capella's Personnel information, operational and other policies, project documentation, proposals, or other development documentation including any specifications, or business strategies, and the Terms and Conditions of this Agreement, including the Fees and information relating to Capella's pricing and all reports generated by Capella. Confidential Information does not include information which:

- a) becomes public knowledge during this Agreement;
- b) is already known to the other party;
- c) is received by the other party from a third party not under a duty of confidence; or
- d) is independently developed by the other party in circumstances where there was no breach of any obligation of confidence.

Consent means any licences, clearances, permissions, authorisations, waivers, approvals or consents.

Consequential Loss means any indirect or consequential loss (not being loss which arises naturally as a result of a breach of this Agreement or other event the subject of the relevant claim), including loss of profits, loss of income or revenue, loss of Data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business.

Consumer Law means the Consumer Protection Act 2007 (Ireland) as amended and replaced from time to time, as applicable.

Contract Year means a 12 month period commencing on the Effective Date or any anniversary of the Effective Date.

Control means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entities, whether through ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise.

Customer Material means any and all Data or other material input, entered into or added or uploaded to the Products, Goods and Services, or otherwise provided or made available to Capella, by, on behalf of, or at the request of, the Customer or its Personnel.

Data means any data, information or Personal Data accessible to Capella (or any third parties who have access to such Data through Capella) under or in connection with this Agreement and which relates in any way to the Customer or its related entities (including their operatives, suppliers, customers and Personnel).

DPA means the Data Protection Act 2018.

Developed Intellectual Property means any Intellectual Property Rights arising from any work done by or for Capella on behalf of the Customer in connection with the Products, Goods and Services, including the development of any portals used by the Customer to access the Products, Goods and Services and any feedback (including suggestions, ideas, information, comments, process descriptions or other information) provided by the Customer to Capella.

Effective Date means the start date of this Agreement, or if no such date is set out, the date of Capella's first invoice to the Customer.

End User Licence Agreement means the end user terms and conditions of use for the particular Products, Goods and Services available on the Capella Website and Capella App, which end users must accept as part of the registration process for a Capella Account.

Execution means either:

- a) when the Customer indicates their acceptance of the Agreement, and any amendment to the Agreement, by checking the tick-box in an Order Form and any Supplementary Order Form, issued by Capella; or
- b) when the parties digitally sign the Agreement, and any amendment to the Agreement (including by Supplementary Order Form), in accordance with the process administered by a third party provider such as DocuSign.

Fees means the fees and expenses set out in the Order Form.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, or power, water and other utility shortage.

GDPR means the General Data Protection Regulation (EU) 2016/679.

Government Agency means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

Capella Account means the account for each end user to enable use of the Products, Goods and Services which is activated following registration and acceptance of the End User Licence Agreement.

Capella Documentation means the API documentation, sample code, reference manual, user instructions, technical literature and all other related materials supplied to the Customer in any format by Capella for aiding the installation, use and application of the Products, Goods and Services (including the Software), and will include all revised documentation supplied as part of an Update.

Capella Website / Website means <https://hybrid.capella-ws.com/>

Initial Term means the initial term set out in the Order Form, such period commencing on and from the Commencement Date and which may be preceded by a Trial Period if a Trial Period is specified in the Order Form. An Insolvency Event occurs in respect of a person where:

- a) a party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets;

- b) a party becomes unable to pay its debts when they fall due, or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- c) a party becomes or is (including under legislation) deemed or presumed to be insolvent;
- d) a party has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
- e) any composition or arrangement is made with any one or more classes of its creditors;
- f) except for the purpose of solvent amalgamation or reconstruction, an order, application or resolution is made, proposed or passed for its winding up, dissolution, administration or liquidation;
- g) a party enters into liquidation whether compulsorily or voluntarily; or
- h) any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software object code and source code), trade marks, service marks, business names, trade names, rights in trade names, domain names, rights in domain names and URLs, company names, product names, logos or get-up, designs, design rights, database rights, patents, rights in inventions, Know-how and other proprietary rights, format rights, trade secrets, semi-conductor or circuit layout rights, rights in Confidential Information, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these (whether or not any of these are registered and including any application, or right to apply, for registration), which may subsist anywhere in the world, existing now or in the future, and all derivations, modifications, improvements and enhancements to these intellectual property rights, but excludes moral rights, and similar personal rights where these are non-assignable.

Jurisdictions means the Ireland, any member state of the European Union and the United States of America.

Know-how means non-trivial industrial and commercial information and techniques, in each case, in any form and not in the public domain.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent. For the avoidance of doubt, Loss does not include payment of Fees.

Minimum User Number means the minimum number of invoiced monthly users as stated in clause 9 of the Order Form.

Monthly Adjustment means the adjustment amount based on the monthly fee per user set out in the Order Form where the actual monthly users exceeds the Minimum User Number.

Monthly Billing Cycle means where invoicing on a monthly basis has been selected in the Order Form. Operating Environment has the meaning given to that term set out in clause 12.

Order Form has the meaning given to that term set out in clause 1(a)(i), as amended by any and all Supplementary Order Forms. All references to Order Form include Supplementary Order Forms unless stated otherwise.

Personal Data has the same meaning as given to that term in the DPA and the GDPR.

Personnel means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the Customer's direct or indirect control and includes any subcontractors, who may also be end users of the Products, Goods and Services.

Privacy Laws means the DPA and all other laws, rules and regulations in the United Kingdom which relate to the privacy, protection, use or disclosure of Personal Data and any guidelines, orders, directives or codes of conduct issued by any Government Agency under or in respect of such laws, rules or regulations, as amended from time to time.

Products, Goods and Services means the products, goods and services specified in the Order Form and described on the Capella Website (as updated from time to time), including any Software, Support Services, any associated Capella Documentation or Updates (as applicable), and any additional material or services the parties have agreed that Capella will supply to the Customer in accordance with the Schedules of this Agreement.

Quarterly Billing Cycle means where invoicing on a quarterly basis has been selected in the Order Form. Renewal Term means, unless otherwise stated in the Order Form or Supplementary Order Forms, a period of 12 months commencing at the end of the Initial Term or the current Renewal Term, which shall automatically renew for further periods of 12 months.

Replacement Fee means the fee charged to the Customer where Goods are not returned as required or returned in an unusable condition, as set out in the Order Form.

Set-up Fees mean the Fees specified as such in the Order Form.

Software means the software, licensed or otherwise, provided to the Customer by Capella in accordance with this Agreement, and includes all software supplied as part of an Update.

Supplementary Order Form(s) has the meaning set out in clause 1(a)(ii), being the instrument to effect all amendments to the Order Form including any changes to licences, Fees, modification, reduction or cancellation of Products, Goods and Services or addition of new services.

Support Services means the support services provided by Capella as specified in the Order Form (if applicable).

Term means the period from the Commencement Date until the end of the Trial Period, the Initial Term or any applicable Renewal Term in accordance with clause 2.

Third Party Content means any information, data or other content that Capella sources and/or supplies from any third party for use in connection with the Products, Goods and Services.

Third Party Licence means any licence, registration or other authorisation that is required by the Customer to enable the Customer to properly access and use the Products, Goods and Services, including any licence, registration or other authorisation as notified by Capella to the Customer.

Trial means use of the Products, Goods and Services specified in the Order Form without charge for the Trial Period, in accordance with this Agreement.

Trial Period means the period of the Trial, being 90 days or such other period as set out in the Order Form.

Update means any update, upgrade or modification to the Software from time to time, but does not include new versions of the Software, and accompanying revisions to the Capella Documentation, as determined in the absolute discretion of Capella.

Upfront Fees mean the Fees specified as such in the Order Form.

25.2. Interpretation Headings are for convenience only and do not affect interpretation.

The following rules apply unless the context requires otherwise.

- a) the singular includes the plural and conversely;
- b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- c) a reference to a person includes anybody corporate, unincorporated body or other entity and conversely;
- d) a reference to a clause is to a clause of these Terms and Conditions;
- e) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- f) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- g) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- h) a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;
- i) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included; and
- j) all references to euro, unless another currency is specified in the Order Form.

Capella Data Security and Privacy Addendum (DPA and GDPR)

This Data Security and Privacy Addendum (Addendum) is supplementary to and forms part of the Capella SAAS Terms and Conditions (Agreement), including as amended from time to time. By signing the Agreement or otherwise accepting the SAAS Terms and Conditions by Executing the Order Form (including any Supplementary Order Forms) or using or accessing the Products, Goods and Services, the Customer enters into this Addendum on behalf of itself and, to the extent required under Applicable Data Protection Laws, in the name and on behalf of its Authorised Affiliates, if and to the extent Capella processes Personal Data for which such Authorised Affiliates qualify as the Customer. For the purposes of this Addendum only, and except where indicated otherwise, the term "Customer" shall include the Customer and Authorised Affiliates. All capitalised terms that are undefined shall have the meaning set forth in the Agreement. In the course of providing the Product and Services to the Customer pursuant to the Agreement, Capella may process Personal Data on behalf of Customer and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

1. Application of This Addendum:
 - 1.1. applies in addition to the Agreement; and
 - 1.2. despite anything to the contrary in the Agreement, overrides and prevails over the terms of the Agreement to the extent of any inconsistency.

2. Definitions

Unless the context otherwise requires, capitalised words in this Addendum have the same meaning as in the Agreement. In addition, the following definitions apply in this Addendum unless the context requires otherwise.

Applicable Data Protection Laws means the DPA, the GDPR and all other applicable Laws, rules and regulations that the Controller is subject to within the United Kingdom and the European Union and, to the extent applicable, the laws of any other country, that relate to the privacy, protection, use or disclosure of Personal Data, provided that to the extent of any inconsistency, the DPA shall prevail.

Attachment means the Attachment to this Addendum.

Auditor is any person which the Controller nominates in writing from time to time.

Authorised Affiliate means any of the Customer's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, and/or the United Kingdom, and (b) is permitted to use the Products, Goods and Services pursuant to the Agreement between Customer and Capella, but has not signed or Executed its own Order Form with Capella and is not a "Customer" as defined under the Agreement.

Controller has the meaning given to that term in the DPA and the GDPR.

Data Subject has the meaning given to that term in the DPA and the GDPR.

Personal Data Breach has the same meaning as given to that term in the DPA and the GDPR.

Processing has the same meaning as given to that term in the DPA and the GDPR.

Processor has the meaning given to that term in the DPA and the GDPR.

Relevant Data means any Personal Data that is received by, accessible by or made available to the Processor by or from the Controller (whether directly or indirectly) under or in connection with the Agreement and/or the Products, Goods and Services.

Sub-processor means any person (including any third party) appointed by or on behalf of Processor to process Relevant Data on behalf of the Controller in connection with the Agreement.

Supervisory Authority means the Data Commissioner of Ireland

3. Role of the Parties

The parties acknowledge and agree that with regard to the Processing of Personal Data, Customer is the Controller, Capella is the Processor and that Capella may engage Sub-processors under the procedure in clause 9 of this Addendum.

4. Mutual Privacy Obligations

Without limiting any other provision of this Agreement, each party agrees in respect of any Personal Data it receives or has access to in connection with this Agreement:

- 4.1. to comply at all times with all Applicable Data Protection Laws in respect of all Relevant Data;
- 4.2. to collect, use and disclose Personal Data only for the purpose for which it was disclosed to that party;
- 4.3. to provide reasonable cooperation to the other party to resolve any complaint alleging a breach of the Applicable Data Protection Laws or by a third party seeking access to Personal Data in accordance with Applicable Data Protection Laws.

5. Processing of the Relevant Data

5.1. Capella must:

- a) process Relevant Data only as is necessary for the purposes of delivering or performing the Products, Goods and Services under the Agreement and only:
 - i) in accordance with the terms contained in the Attachment to this Addendum (which may be amended by the Customer by notice in writing from time to time);
 - or
 - ii) as otherwise instructed by the Customer in writing, unless Capella is required to do otherwise by any Law to which Capella is subject, in which case Capella must notify the Customer prior to undertaking such Processing (unless the making of such a notification is prohibited by applicable Law);
- b) immediately inform the Customer, in writing, if Capella considers that any written instructions in accordance with clause 5(a)(i) of this Addendum are or would be inconsistent with Applicable Data Protection Laws; and
- c) except as provided in clause 5(b) of this Addendum, provide the Customer with prior written notice if it intends to hold or transfer the Relevant Data outside the Ireland and the European Union. For the avoidance of doubt, such notification should include the transfer mechanism that will be relied upon as a basis on which such a transfer would be permitted under the DPA and the GDPR.

5.2. Despite anything in this Addendum to the contrary, the parties agree that Capella is not required to provide prior written notice of a transfer of the Relevant Data to its cloud service provider and other Sub-processors.

5.3. Except as required by applicable Law, Capella must:

- a) not use Relevant Data for any purpose other than directly in relation to the performance of its obligations under the Agreement;
- b) not, and must ensure that its Personnel will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Relevant Data; and
- c) not make any Relevant Data available to a third party other than an approved Sub-processor and then only to the extent necessary to enable the approved Sub-processor to perform its part of Capella's obligations under this Addendum and the Agreement.

6. Data Accuracy

The Customer must assume responsibility for the accuracy quality and legality of the Relevant Data and the means by which the Customer acquired the Relevant Data.

7. Data Security

7.1. Capella must establish and maintain appropriate technical and organisational safeguards against the misuse, interference, destruction, loss or unauthorised access or disclosure or modification of the Relevant Data in the possession or control of Capella that:

- a) are consistent with and no less rigorous than those maintained by organisations similar to Capella engaged in security 'best practice' to secure that data (including, but not limited to, a high level of IT security, physical security, and Personnel security); and
- b) comply with all Applicable Data Protection Laws and any procedures notified from time to time to Capella by the Customer concerning the Customer's data security requirements.

7.2. Capella shall notify the Customer without undue delay should it become aware of a security breach affecting Personal Data.

8. Deletion or return of the Relevant Data Promptly after the termination or expiry of the Agreement Capella must, at the election of the Customer:

- 8.1. return all the Relevant Data to the Customer;
- 8.2. destroy all the Relevant Data, in a manner agreed to by the Customer; and/or
- 8.3. de-identify all the Relevant Data, in a manner agreed to by the Customer, unless a Law binding on Capella prevents Capella from doing so as requested, in which case Capella agrees that it will continue to observe the terms of this Addendum for as long as it is required to retain the Relevant Data and, once Capella is no longer required to retain the Relevant Data, Capella will perform the action originally requested by the Customer under this clause.

9. Sub-processors

9.1. The Customer provides a general authorisation to Capella to engage further Processors to process Personal Data. Capella shall provide the Customer with a list of those Processors on request. Capella shall give the Customer prior notice of any intended addition to or a replacement of those further Processors so that the Customer may raise any objections that it may have within 10 Business Days of receiving the prior notice; and

9.2. Capella

- a) is not relieved of any of its liabilities or obligations under this Addendum and remains liable to the Customer for the acts, defaults and neglect of any Sub-processor or any

Personnel of the Sub-processor as if they were the acts, defaults or neglect of Capella;
and

- b) is responsible for the performance of each Sub-processor and ensuring the suitability for each Sub-processor for the Processing to be performed by that Sub-processor.

10. Rights of Data Subjects

Capella must:

- 10.1. Implement appropriate technical and organisational measures in order to assist the Customer to comply with the Customer's obligation to respond to requests to exercise Data Subject Rights under any Applicable Data Protection Laws in respect of the Relevant Data (Data Subject Request);
- 10.2. Promptly notify the Customer if Capella receives a Data Subject Request;
- 10.3. Assist the Customer to meet its obligation to respond to a Data Subject Request under Applicable Data Protection Laws
- 10.4. Provide the individual with access to any record of the Relevant Data following a request from an individual where a response is required to be made by Capella under Applicable Data Protection Laws.

If the Customer, in its use of services, does not have the ability to address a Data Subject Request:

- 10.5. Capella must, upon the Customer's request, provide commercially reasonable efforts to assist the Customer in responding to such Data Subject Request; and
- 10.6. The Customer will be responsible for any costs arising from Capella's provision of such assistance.

11. Personal Data Breach

- 11.1. If Capella becomes aware, or believes or suspects, that a Personal Data Breach has or may have occurred in relation to any Relevant Data, Capella must:
 - a) immediately notify the Customer in writing and provide the Customer with all known details relating to that actual or suspected Personal Data Breach;
 - b) cooperate and comply with all reasonable directions of the Customer in relation to that actual or suspected Personal Data Breach;
 - c) promptly take all reasonable steps to rectify or remedy that actual or suspected Personal Data Breach where possible; and
 - d) cooperate with the Customer in:
 - i) the resolution of any complaint alleging a breach of the Applicable Data Protection Laws regarding the Relevant Data;
 - ii) assisting the Customer to meet their obligation under clause 11(b) of this Addendum to notify the occurrence of the Personal Data Breach that affects or relates to Relevant Data to the Supervisory Authority and to affected Data Subjects, but only where the Customer determines that such a notification would be required by Applicable Data Protection Laws; and
 - iii) any investigation by the Customer or the Supervisory Authority or other competent data privacy authorities relating to the Personal Data Breach that affects or relates to Relevant Data.

11.2. If the Customer determines that notification of the Personal Data Breach would be required by Applicable Data Protection Laws, the Customer will prepare a proposed statement in accordance with Applicable Data Protection Laws, obtain Capella's written approval to that statement and the method of notification for issuing such statement to affected Data Subjects and the Supervisory Authority, and, when such written approval is received, issue the statement to affected individuals and the Supervisory Authority on behalf of itself and Capella.

12. Data Protection Impact Assessments

Capella will provide the Customer with reasonable assistance (including providing any reasonably necessary data or information) in relation to the Customer:

- 12.1. Undertaking any data protection impact assessments that the Customer reasonably considers would be necessary under or required by any Applicable Data Protection Law; and
- 12.2. Engaging in any required consultations with the Supervisory Authority or other competent data privacy authorities that the Customer reasonably considers to be required of the Customer under Applicable Data Protection Laws

Attachment: Details of Processing of the Relevant Data

1. Subject matter and duration of the Processing of the Relevant Data
Data including personal information (as set out in the collection notice and privacy policy) required for the purposes of delivering the Software/Products, Goods and Services.
2. Nature and purpose of the Processing of the Relevant Data Collecting data including personal information and ordering the data for the purposes of identifying and allocating office seating and other related information
3. Types of Relevant Data to be Processed Data including but not limited to an individual's name, birthdate, mobile phone number, office locations, employee or staff number, corporate title, work locations, email address, hours of utilisation, survey data, working hours, desk utilisation and absenteeism including vacations (statutory or otherwise) and sickness
4. Categories of Data Subjects to whom the Relevant Data relates Any officer, employee, contractor, servant, agent, or other person under the Customer's direct or indirect control and includes any subcontractors, who may also be end users of the Products, Goods and Services.
5. Permitted Sub-processors that can be engaged to process the Relevant Data
Our cloud provider, Amazon AWS