Your 2018/19 Support Agreement
Here when you need us

Breadth and depth of expertise
Local knowledge, national presence
Broad support, from technical to school improvement

Who benefits?
Senior leaders  Teachers  Administrators  Business Managers
Whether you are a senior leader, teacher, business manager or administrator, your Capita SIMS support agreement will help to ensure your SIMS software is kept running at optimum efficiency, with the added benefit of strategic input from your Customer Services Manager (CSM).

Senior leadership team
✓ Our expert team will help you maximise the impact of SIMS in your school, to improve the learning and achievement of your pupils.
✓ Your dedicated Customer Services Manager will assist you with understanding the breadth of SIMS at a strategic level and advise on how it can be used most effectively to meet your school priorities.
✓ SIMS support can assist with the effective leadership of your school so that you have the evidence required in one place and the ability to share information with relevant stakeholders.

Teachers
✓ Ease your daily workload and maximise the use of your data, knowing that you’ll receive personalised, comprehensive support for SIMS software and all SIMS modules.
✓ Our regular communications and updates will enable you to better meet the needs of your students by ensuring that every student’s progress is tracked, helping to inform your lesson planning.
✓ Our support will provide you with expert assistance for all your SIMS modules.

Administrative staff
✓ Our service desk staff are on hand to answer your SIMS questions, helping you to streamline your processes and reduce the time you spend on administrative tasks.
✓ You’ll receive regular communications and updates from your dedicated Customer Services Manager to support key tasks such as statutory returns, census, managing pupil premium and highlighting new features within SIMS.
✓ Join our webinars exclusively for administrative staff, where we will share our top tips for getting the most out of SIMS.
✓ Your CSM will share updates and provide tips on how to get the most from SIMS, ensuring you can access the information you need for each individual student.

Business Managers
✓ Your Customer Services Manager can advise you on how best to maximise your investment in SIMS, providing the expertise and guidance you need to ensure the effective use of data in your school.
✓ We’ll advise you on how to utilise SIMS to drive efficiencies and help your budget go further.
✓ With our expertise you can ensure resources are put to the best possible use and evidence the impact of your spend.

How is our service desk doing?
We were happy to outperform on our service level agreement (SLA) across all priority levels during 2016-2017.

Already in 2017...
[Timers with percentages: 85% of cases resolved within 4 hours, 91% of cases resolved within 8 hours]

In 2017, 7 out of 10 calls to our service desk were fixed on the first call.*

*Figures from January to May 2017.
Why Capita Enhanced Support?

We have a customer service level agreement (SLA) in place, to ensure that we deliver great customer service.

‘Response’ means initial contact from Capita regarding your case via email or telephone.

‘Resolution’ means a solution is offered. If a visit is required then the case will be put into a state of ‘wait’ until the visit has been carried out.

‘Committed’ times are the percentage of times we must meet these response and resolution targets over the course of your contract as part of our SLA.

<table>
<thead>
<tr>
<th>Priority</th>
<th>Description</th>
<th>Response</th>
<th>Committed Service Level</th>
<th>Resolution</th>
<th>Committed Service Level</th>
<th>Our Performance in 2017*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Entire system failure. The failure of a time-critical activity, for example payroll or statutory returns.</td>
<td>1 hour</td>
<td>90%</td>
<td>4 hours</td>
<td>75%</td>
<td>97%</td>
</tr>
<tr>
<td>2</td>
<td>High – system or key module failure. A malfunction causing impact on ability to operate significant key business processes or production. No workaround or manual process is available.</td>
<td>2 hours</td>
<td>90%</td>
<td>8 hours</td>
<td>80%</td>
<td>84%</td>
</tr>
<tr>
<td>3</td>
<td>Medium – an issue that causes a significant impact to business but a workaround or manual process is available.</td>
<td>4 hours</td>
<td>90%</td>
<td>2 working days</td>
<td>85%</td>
<td>95%</td>
</tr>
<tr>
<td>4</td>
<td>System usage assistance or guidance is required on service/system/hardware/software queries that are not the consequence of a failure.</td>
<td>8 hours</td>
<td>90%</td>
<td>5 working days</td>
<td>90%</td>
<td>99%</td>
</tr>
</tbody>
</table>

Case logging process

All cases are logged and a unique reference number is allocated to each case. The service desk will endeavour to resolve a case at first contact. If the case cannot be resolved immediately, a specialist will own and manage this through to resolution. Contact will be maintained throughout the resolution process.

Customer feedback

As part of our SIMS Enhanced Service Desk Survey we asked all customers logging a case to tell us how we did.

“Capita SIMS Enhanced Support has been a great benefit to our academy trust. Knowing that I have immediate access to the right support, as and when I need it, enables me to provide an exceptionally high level of service to my colleagues.”

Tony Cartwright, Systems Manager, The Brunts Academy Trust

Service desk

Opening hours

The enhanced support service desk is available by telephone, email or voicemail during the following service times: Monday to Friday: 08.00-17.30

- Main service desk: 0844 893 8000†
- Dedicated finance desk: 0845 607 6275†
- Email: esd@capita.co.uk

An answerphone service operates outside of these hours. These service hours exclude the days between Christmas and New Year and all English public holidays.

For further information on your agreement, please call 0800 170 1732.

*Figures from January to May 2017.
† Calls to 0844/0845/0870 numbers will cost 3 pence per minute, plus your phone company’s access charge.
Your SIMS Only Support agreement offers experienced service desk analysts to support SIMS and discounted rates for training courses, consultancies and installations. This support contract includes:

**Keeping you informed and up to date**

A dedicated Customer Service Manager (CSM) – you will have access to a named CSM who has a real understanding of educational changes. Your CSM will assist you in understanding the breadth of SIMS and how the effective use of SIMS can support your school priorities.

As part of your contract, your CSM will also provide guidance documentation, webinars and newsletters to keep you informed of enhancements and support key processes, such as census and managing pupil premium.

SIMS Update Seminars – these popular events are held regularly at venues around the country to provide updates and support. They also facilitate the sharing of best practice and networking with other schools using SIMS.

100% of delegates who responded to our feedback questionnaire would recommend these events to other schools.†

Support for Hosted SIMS – for schools with Hosted SIMS you can access SIMS, and all its features and functionality, from any Internet-connected device, wherever you are.

You’ll save time maintaining your IT systems, and we manage your SIMS upgrades, backups, update filesets and apply patches as required. You’ll also have access to guidance documentation and webinars providing top tips for staff new to Hosted SIMS and to support routine tasks such as setting up and managing new users.

**Expert service desk support**

Personalised support – from a service desk analyst who will talk through your case and, if required, access your system remotely to provide a resolution.

Unlimited reactive support visits (for remedial work) – visits to address cases logged with the service desk where it is deemed by Capita to be the most appropriate course of action to resolve a support case.

Support for SIMS application suite – our experienced staff will provide comprehensive support for your SIMS software. All SIMS modules are covered by this agreement.*

SIMS application suite update management by SOLUS – we will advise you of any changes to the SIMS application suite to enable you to carry out updates promptly when they are made available to you via SOLUS.

Database recovery service – this service is designed to assist you to recover, from backup media, SIMS and FMS data lost or compromised during a major system failure. However, Capita is not responsible for the integrity of the SIMS and FMS databases. If a visit is required, this will be chargeable.

**Discounted rates**

As an enhanced support customer, you will benefit from discounts on training courses, school-based consultancy and installations provided by Capita SIMS.

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*Please note SIMS Learning Gateway is covered by the Capita Children’s Services Charter which can be viewed on My Account. However, any SIMS Learning Gateway cases will still be handled via the enhanced support service desk.

†SIMS Update Seminars Spring term 2017

Do you need more expert support?

Upgrade to a Whole Support agreement and benefit from an onsite visit each term. This will also allow you to take advantage of the expert support services which are offered as part of the Whole School agreement, including:

- Key procedure assistance, including:
  - support for end of year
  - statutory returns
  - and SIMS basic reporting.
- General SIMS administration
- SIMS health check
- Technical health check
- FMS visits

You can also purchase these options from our +Services range. For more information, please call 0800 170 1732.
### Keeping you informed and up to date

<table>
<thead>
<tr>
<th>Your package</th>
<th>SIMS Only Support</th>
<th>Admin ICT Support</th>
<th>Whole Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>A dedicated Customer Services Manager (CSM)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• strategic support - to maximise the benefits of your Whole Support consultancy visits</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• enhanced guidance documentation, newsletters and webinars</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• senior leadership team overviews - delivered by your CSM</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>SIMS Update Seminars - regional and national seminars</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

### Termly onsite visits from your Whole Support Consultant

These visits can be used to carry out key procedures and tasks within core SIMS and FMS. These tasks can include end-of-year processes, data entry such as updating pupil and staff records, housekeeping and technical health checks for core SIMS.

### Discounted rates

Discounted rates on training, school-based consultancy and installations.

### Expert service desk support

<table>
<thead>
<tr>
<th>Your package</th>
<th>SIMS Only Support</th>
<th>Admin ICT Support</th>
<th>Whole Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personalised support</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• telephone support</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• remote support</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• email support</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>General advice on systems and software, including:</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• hardware systems</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• peripherals such as printers and scanners</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• backup software and operating systems</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• system security and antivirus software</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Unlimited reactive support visits</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Support for SIMS application suite</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Database recovery service</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>System recovery*</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Re-installation of the supported SIMS and FMS software plus operating system</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Support for other specified software (including Microsoft® and antivirus)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Network support*</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>For SIMS and other applications (email, EDI and Internet)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Curriculum support</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Supporting your curriculum network, operating systems and a range of supported software</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

*Excludes hardware

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Make sure you register for My Account to access your enhanced guidance documentation, webinars and more. Visit myaccount.capita-cs.co.uk.

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To upgrade your support level or for further information, please call 0800 170 1732.
Optional extras: get more from your budget

Exclusive discounts on training and consultancy

Make a real difference to your school
As an enhanced support customer, you benefit from discounted training and consultancy from Capita SIMS. Our training courses cover all areas of SIMS, giving you and your staff the knowledge to use SIMS more effectively.

Even better value with prepaid training packs
Our prepaid packs allow you to purchase your SIMS training and consultancy allowance for the year ahead at a special rate, enabling your training budget to stretch further.

For more information call the training team on 0800 170 1724 or visit www.capita-sims.co.uk/training.

What our customers say:

“The course was presented at an excellent pace that helped to put everyone at ease. The SIMS training team was also both helpful and knowledgeable, which made it a great day.”

Eileen Lancaster, Teacher at Kings Heath Primary School

99% of delegates trained by Capita SIMS this year were satisfied or very satisfied.

+Services: cost-effective IT and administrative expertise

As an enhanced support customer, you receive an exclusive discount on our +Services range of IT and administrative options. +Services offers you access to the expertise you require, leaving you with the freedom to focus on what really matters.

Options include:

Onsite technical service - ensuring your curriculum and network systems are up to date, thereby releasing valuable management time.

Hardware maintenance service - assurance that if anything goes wrong with your hardware, we can put it right.

SIMS financial service - enables you to hand over SIMS financial procedures to experienced Capita staff, allowing you to focus your time on other financial matters.

Remote backup and monitoring - provides you with a remote service that ensures your data is protected, monitored and recoverable.

Contact us
These options are available to purchase on an annual contractual basis. Call the team to discuss your requirements on 0844 893 6000.*

For more information, visit www.capita-sims.co.uk.

*Calls to 0844/0845/0870 numbers will cost 3 pence per minute, plus your phone company’s access charge.
Harnessing your data to drive improved teaching and learning.

Bespoke tools for data collection and analysis
Successful school improvement strategies rely on the effective collection and use of data. As part of our service, the SIMS School Improvement Programme can work with you to implement a range of bespoke data collection and analysis tools that directly support your school’s individual priorities. These can include adoptions to the Programmes of Study resources and a bespoke system of marksheets and templates in SIMS Assessment, as well as customised analytical reports providing insight into pupil attainment and progress.

Ensure your staff have access to the data they need
The SIMS School Improvement Programme Data Dashboard is a reporting service that allows you to automate customised reports to meet the different needs of the staff in your school, from senior leaders to teachers. Your consultant will work with you to ensure each member of your team has access to the data they need to drive school improvement. Data is presented in easily assimilated charts with the functionality to filter, zoom and drill down. You can select from a multitude of dashboards including attendance, absence, achievement, behaviour and much more.

Strategic support from expert consultants
Our expert consultants work with you to ensure you are gaining the specific intelligence that you need from your data. They can advise on how best to develop the effective use of data throughout your school in support of whole school improvement and developing an ‘always prepared for inspection’ policy. The focus of each consultation is tailored to meet the needs of your individual school or academy group.

Find out about our tailored packages and how they can help your school. Visit www.capita-sims.co.uk/SIP or call 0800 170 1724.
Whether you are considering becoming an academy, have recently converted or you have been an academy or academy group for a while, you need the right systems in place to successfully manage your responsibilities.

Helping your conversion to academy status
When you convert to an academy, you will need a new financial management system to deal with the new financial year which runs from September to August. Our Academy SIMS Finance Conversion Service helps you to set up your new financial system — giving you the best possible start to managing your academy finances.

Making the most of SIMS
Use SIMS to meet your legal financial obligations, demonstrate improvement and ensure you are making the most of being an academy or academy group. SIMS can help you effectively use your data to drive improvement.

Manage your finances efficiently
We understand that efficient financial management is of utmost importance to any academy or academy group. Our new SIMS Finance solution has been specifically designed for managing school and multi-academy trust finances. In a few clicks, you can go from an overall group dashboard, to viewing individual purchase orders, making it a comprehensive solution to help you meet your financial legal obligations.

A number of SIMS Finance scheduled courses are available specifically for academies. We also offer a range of remote training sessions.

Bring data to the heart of your academy group
SIMS SchoolView brings key SIMS data to the centre of your group, with easy-to-use dashboards providing insight into how your schools are performing and empowering you to make more informed decisions.

Drive improvement in your academy or academy group
Take advantage of one of our strategic development planning days. A specialist consultant will work with you to analyse your development priorities. They will then work with you to develop an action plan tailored to your needs and recommend areas for development.

We’re here for you...
Becoming an academy or academy group means you have greater freedom to choose the support you need. If you’re currently evaluating your support options, find out more about the flexible support we provide: www.capita-sims.co.uk/support-and-services

How SIMS helps academies and groups
- SIMS SchoolView - a consolidated view of your academy group’s data
- SIMS Finance - our new finance solution to manage your school finances
- Hosted SIMS - access to SIMS from any internet connected device
- SIMS Discover - monitor at risk groups, assess intervention strategies and see the whole picture of your school
- SIMS School Improvement Programme - provides you with the expertise you need to drive improved teaching and learning but ensuring you’re getting the most out of your data

Call us on 0800 170 1724 or visit www.capita-sims.co.uk/acad.
Services Agreement

Parties:
Capita Business Services Limited, trading as Education Software Services, a company registered in England No. 2299747, (hereinafter referred to as ‘Capita’) of 61–71 Victoria Street, Westminster, London SW1H 0XA, AND

The school named in the attached Agreement Summary (hereinafter referred to as the ‘Customer’)

1. Definitions

In this Agreement, the following words and phrases have the following meanings:

‘Additional Services’ means any services other than the Services to be provided by Capita at the Customers request for an additional charge calculated in accordance with Capita’s then current standard scale of charges unless otherwise agreed between the parties;

‘Agreement’ means the Agreement Summary and the Support Agreement which incorporates these terms and conditions;

‘Agreement Summary’ means the document of that name attached to the Support Agreement which contains, inter alia, details of the Customer and a summary of Capita’s agreement with the Customer;

‘Charges’ means the charges to be paid by the Customer to Capita pursuant to Clause 6 in respect of any part of the Services;


‘Effective Date’ means the date of signature of this Agreement by the Customer;

‘Force Majeure’ means any event beyond the reasonable control of Capita including, without limitation, strikes, labour disputes, acts of God, war, riot, civil commotion, malicious damage, fire, flood and storm;

‘Information Asset Register’ means the record of processing activities in relation to this Agreement that is required to be maintained by the Data Processor under the Data Protection Legislation from 25 May 2018;

‘Initial Term’ means the initial term of this Agreement as set out in the Agreement Summary;

‘Intellectual Property Rights’ means any copyright, patent, registered design, trademark, database and/or other intellectual property right of whatever nature subsisting anywhere in the world;

‘Services’ means the services to be provided by Capita as set out in the attached Support Agreement;

‘SIMS’ means Capita’s Schools Information Management System software;

‘Support Agreement’ means the document of that name which incorporates these terms and conditions and which sets out, inter alia, the details of the support services that are offered by Capita;

‘Term’ means the term of this Agreement pursuant to Clause 3;

‘Working Day’ means Monday to Friday between the hours of 08:00 and 17:00 excluding (i) public holidays and (ii) the three days that are not public holidays between Christmas and New Year each year.

2. Agreement

2.1 In consideration of the payment of the Charges, Capita agrees to supply to the Customer the Services specified in the Support Agreement for the Term in accordance with the provisions of this Agreement.

3. Term

3.1 Subject to Clause 16, the Term of this Agreement shall be the Initial Term which shall automatically continue for subsequent annual periods thereafter until terminated by either party giving not less than 90 days prior written notice to the other party, to expire on the next annual renewal date.

4. Warranties

4.1 Capita warrants that it will supply the Services by appropriately qualified and trained personnel.

4.2 The Customer warrants that it is the legal owner or licensee of all software and hardware that Capita supports as part of the Services and that it has all required permissions to permit access to the software and hardware by Capita.

4.3 Save as expressly specified in this Agreement, all other telecommunications, representations, or guarantees which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, written or oral, common law or otherwise, are hereby excluded, including, without limitation, the express or implied conditions, warranties or other terms relating to the use of reasonable skill and care, or the performance, satisfactory quality or fitness for purpose of any part of the provision of Services.

5. Indemnity

The Customer warrants that it has the right to authorise Capita to provide the Services under this Agreement and is duly authorised to enter into this Agreement. The Customer shall indemnify and hold Capita harmless from any claim caused by or arising from any unauthorised use by Capita, in the course of providing the Services, of any item used by or under the control of the Customer for which Capita has been contracted to provide Services.

6. Charges and Payment Terms

6.1 The Charges for the Services for the Initial Term are set out in the attached Agreement Summary.

6.2 Payment is due annually in advance for each annual period beginning on 1st April. The Charges do not include the costs of VAT (or other applicable taxes), which, if applicable, shall be payable ny the Customer and added to such Charges at the rate in force at the time that they become due.

6.3 Payment of the Charges shall be made by the Customer within 30 days of the date of invoice from Capita. It is a condition of this Agreement that all Charges due for payment after 1st April 2014, be paid by direct bank transfer into the Capita Business Services’ limited bank account at Barclays Bank PLC (Account Number: 60864978, Sort Code: 20-67-59) using any of the following options:

• BACS (including the Faster Payments Service)
• CHAPS
• A debit or credit card.
• A Direct Debit mandate.

Payment by Cheque beyond 1st April 2014 will not be acceptable and may mean the loss of your SIMS support until cleared funds are received at the bank.

6.4 Without prejudice to any right of termination, in the event that any payment due under this Agreement is not made on the due date (in the absence of genuine error) Capita shall (at its discretion) be entitled to charge interest (both before and after any judgement) on a day to day basis upon the overdue amount at 8% (eight per cent) above the Bank of England base rate from time to time as defined by the Late Payment of Commercial Debts (Interest) Act 1998.

6.5 Capita reserves the right to suspend the Agreement or the provision of any Services provided by Capita under this Agreement in circumstances otherwise entitling it to terminate this Agreement. Such suspension shall not be deemed to represent a waiver of Capita’s right to terminate the Agreement.

6.6 Upon expiry of the Initial Term, Capita reserves the right to increase the Charges subject to giving the Customer at least 90 days written notice thereof to have effect from the first day of the next annual period.

7. Where Services are provided at the Customers location then the cost of providing suitable means of travel, hotel accommodation and subsistence, etc. for Capita staff will be added to the charges in the Agreement Summary.

8. Confidentiality

8.1 Capita and the Customer shall use all reasonable endeavours to keep confidential (and ensure that their employees, agents and sub-contractors keep confidential) all information to which they may become privy in the course of the performance of this Agreement and is duly authorised to enter into this Agreement. The Customer shall indemnify and hold Capita harmless from any claim caused by or arising from any unauthorised use by Capita, in the course of providing the Services, of any item used by or under the control of the Customer for which Capita has been contracted to provide Services.

9. Termination of Agreement

9.1 Either party may terminate this Agreement in the event that the other party enters into a voluntary arrangement with a view to being wound up or liquidation (except for the purpose of amalgamation or a solvent reconstruction) or otherwise ceases to trade.

9.2 Either party may terminate this Agreement in the event that the other party commits a material breach of this Agreement and, if the breach is capable of remedy, the party in breach fails to remedy the breach in question within fifteen (15) Working Days of receiving written notice from the other party in pursuance of its rights where a breach of confidence occurs.

9.3 Where the termination of this Agreement by Capita results from a breach of this Agreement by the Customer, Capita shall be entitled to retain all the Charges paid to Capita by the Customer up to and including the date of termination.

9.4 Any termination of this Agreement shall be without prejudice to the remedies of either party in respect of a subsisting breach.

9.5 Capita reserves the right to terminate support Services of any third party item listed in the Agreement Summary should such third party...
cease to provide software maintenance services on which Capita relies to provide Services under this Agreement.

10. Liability

10.1 Neither party shall exclude or restrict its liability in connection with this Agreement resulting from death or personal injury caused by negligence of that party, its officers, employees, contractors or agents, or for fraud or breach of obligations implied by Sections 12 of Sale of Goods Act 1979 or section 2, Supply of Goods and Services Act 1982, nor any other liability which may not be excluded by law.

10.2 Subject to Clause 10.1 the aggregate liability of Capita, whether for damages, payments of compensation or by way of indemnity or of any nature howsoever arising under or in relation to this Agreement or any part thereof (including as a result of negligence) shall be limited to the aggregate payments made by the Customer to Capita in the preceding twelve (12) months, in respect of the Services in respect of which the liability has arisen.

10.3 In no event shall Capita be liable to the Customer in respect of loss of profits, business, revenue, goodwill or anticipated savings or indirect or consequential loss or damage (whether caused by negligence or otherwise) or the acts or omissions of any third party (whether as a result of negligence or otherwise).

10.4 During the Term of this Agreement, Capita shall maintain in force with a reputable insurance company or companies, public and product liability, professional indemnity insurance, employer’s liability insurance and Capita shall upon written demand produce to the Customer sufficient written evidence of the existence and maintenance of such cover.

11. Data Protection

11.1 Each party warrants to the other that it shall, in connection with this Agreement, comply with the provisions of the Data Protection Legislation and any modification or re-enactment thereof. The Customer shall indemnify and keep indemnified Capita against any reasonable losses, liabilities and costs which it suffers or incurs as a result of either (i) a breach of the Data Protection Legislation by the Customer, or (ii) Capita following the Customer’s instructions, policies or procedures in relation to the data processing undertaken.

11.2 Capita warrants that it shall:
11.2.1 only process the personal data in accordance with the Customer’s documented instructions or as required by law;
11.2.2 implement appropriate technical and organisational measures against unlawful or unauthorised processing and/or against accidental loss or destruction of or damage to personal data which the Customer agreed are appropriate measures;
11.2.3 ensure Capita staff who have access to the personal data are subject to appropriate confidentiality obligations;
11.2.4 not process or transfer personal data outside the EEA or engage a third party to process personal data without the prior written consent of the Customer;
11.2.5 save as required by law, at the choice and cost of the Customer, delete or return the personal data on expiry of this Agreement or any conditions forming part of a purchase order or sent by first class recorded delivery post to the Customer following any request for return or use of personal data subsequently notified in writing to the other party.
11.2.6.2 maintain in force with a reputable insurance company or companies, public and product liability, professional indemnity insurance, employer’s liability insurance and Capita shall upon written demand produce to the Customer sufficient written evidence of the existence and maintenance of such cover.

11.3 Capita will ensure that the subject matter, duration, nature and purpose of the processing activities, the type of personal data processed, the categories of data subjects and the obligations and rights of the Data Controller in relation to this Agreement are set out in the Information Asset Register.

11.4 The Customer warrants, represents and undertakes to Capita that its instructions in relation to processing the personal data in accordance with the provisions of this Agreement are lawful.

11.5 For the purposes of this Clause 11 the terms “Data Controller”, “Data Processor”, “personal data” and “process” shall have the same meaning as in the Data Protection Legislation. For the avoidance of doubt, the Customer is the Data Controller and is therefore solely responsible for the security and protection of any data held on the Software and/or Services, and Capita is the Data Processor.

11.6 Capita agrees that it will comply with the Capita Group Data Protection Policy and the Customer shall be entitled to have sight of that policy on request.

12. Restriction

12.1 Neither party shall at any time prior to or within twelve (12) months of the termination of this Agreement solicit the employment of any person who is employed by the other in the course of providing, assisting or developing the Services, unless first agreed between the parties.

13. Force Majeure

13.1 If either party is unable to carry out any of its obligations under this Agreement due to a Force Majeure this Agreement shall remain in effect and both parties’ obligations in respect of the matter concerned shall be suspended without liability until the Force Majeure ceases to exist. Either party may terminate the supply of the part of the System or the Services concerned if the Force Majeure cannot be remedied in all material respects within six (6) months of its commencement.

14. Notices

14.1 Any notice to be served under this Agreement shall be in writing and either delivered personally or sent by first class recorded delivery post to the party to whom the notice is addressed at its addresses set out in the Agreement Summary or such other address subsequently notified in writing to the other party.

14.2 A notice is deemed duly given if delivered personally at the time at which it was sent or delivered by first class recorded delivery post, at 10.00 hours on the second Working Day following the recorded day of posting.

15. Severability

15.1 If any provisions of this Agreement should ever be determined to be illegal, invalid or otherwise unenforceable by reason of the laws of any state or country in which this Agreement is intended to be effective, then to the extent and within the jurisdiction in which such provision is illegal, invalid or unenforceable it shall be severed and deleted from here and the remaining provisions hereof shall survive, remain in full force and effect and continue to be binding and shall not be affected except insofar as may be necessary to make sense of this Agreement, and shall be interpreted so as to give effect to the intention of the Parties in so far as that is possible.

16. General

16.1 No press or other public statement shall be made in respect of this Agreement without the prior written consent of the other party (consent not to be unreasonably withheld).

16.2 No variation of this Agreement shall be binding unless made in writing and signed by a duly authorised officer of each party.

16.3 The headings to Clauses in this Agreement are for ease of reference only and shall not be construed otherwise.

16.4 This Agreement sets out the entire agreement and understanding between the parties in connection with its subject matter and shall override all previous verbal or written agreements and understandings, save in respect of fraudulent misrepresentation. This Agreement shall apply to the provision of Services to the exclusion of any other conditions (including, but not limited to, any conditions of the Customer or Capita or any other document or writing) (whether sub-sequently provided by the Customer to Capita).

16.5 The parties respectively shall ensure that there are done and executed all acts, documents and other things as may reasonably be required for securing each of the rights and obligations of the parties under this Agreement.

16.6 This Agreement may be entered into in any number of counterparts each of which shall be deemed to be an original and which together shall comprise this Agreement. Each party is entitled to assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Capita (not to be unreasonably withheld).

16.7 Save as provided in this Agreement, the Customer shall not be entitled to sub-licence, assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Capita (not to be unreasonably withheld). Capita is entitled to assign or otherwise transfer its rights or obligations under this Agreement to another wholly owned subsidiary of Capita plc.

16.8 This Agreement and any rights or obligations under this Agreement shall continue for the benefit of the successors and permitted assigns (as the case may be) of each of the parties hereto.

16.9 All provisions of this Agreement shall so far as they are capable of performance and observed continue in full force and effect notwithstanding expiry or earlier termination.

16.10 No whole or partial failure to exercise or no delay in exercising any right hereunder shall operate as a final waiver thereof unless expressly as such in writing.

16.11 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies otherwise provided by law.

16.12 The parties do not agree that they have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16.13 The Customer agrees to provide Capita, without charge, access to all computer time, resources, accommodation, skilled staff and telecommunications as reasonably required by Capita in the provision of the Services.

16.14 If any part of this Agreement is held to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

16.15 The parties hereby agree that this Agreement may be electronically signed. The parties agree that any electronic signatures appearing on this Agreement have the same legal status as handwritten signatures for the purposes of validity, enforceability and admissibility.

17. TUPE

17.1 The Customer and Capita agree that it is not their intention that on the commencement, termination or expiry this Agreement or any transfer or assignment of this Agreement further to the Transfer of Undertakings (Protection of Employment) Regulations 1981 (‘TUPE’) arises. In the event that any of the matters referred to in this Agreement do constitute a transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (‘TUPE Regulations’), in respect of any employee either of the Customer, Capita or the previous service provider then Capita and the Customer agree to comply in full with their respective obligations in law, including under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

18. Law and Jurisdiction

18.1 This Agreement shall be governed by and construed in accordance with English law and each party irrevocably submits to the exclusive jurisdiction of the Courts of England.