



# Capture Consulting and IT Services GmbH

## Software License and Services Terms and Conditions

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(Non-consumer version)

These Software License and Services Terms and Conditions (the “**Terms**”) govern all purchases of-, use of- and contractual relationship established for the Capture Products defined hereunder by you as the customer („**you**” or „**Customer**”).

If you have entered into another written agreement with us concerning a specific Product, then the terms of that specific agreement will control, where it conflicts with these Terms.

By accepting these Terms, you (i) are fully capable and authorized to represent and bind yourself or your company and (ii) accept that if you are agreeing to these Terms not as an individual but on behalf of your company, then “**you**” or “**Customer**” means your company that you represent, and you are binding your company to these Terms, furthermore (iii) you state that you purchase or use the Products for your business purposes and you accept that you do not qualify as a “consumer” under any choice of law.

The following additional terms (“**Additional Terms**”) are attached and considered as integral part of these Terms:

[Product and Service Description and Pricing Policy](#)

[Third Party Software Policy](#)

In the event of a conflict or contradiction between these Terms and any Additional Terms, the Additional Terms shall prevail.

As stated in detail in Section 2.2, Capture may modify these Terms from time to time, subject to the conditions there stated.

## 1 Contracting Entity, Governing Law

1.1 Your relationship is with entity below, and your Agreement is governed by the laws of Austria:

Name	Capture Consulting und IT Services GmbH
Registered Office	A-1100 Wien, Wienerbergstraße 11 / A / 15
Registration number	FN 418286 b
EU VAT ID	ATU68861145
Tax Number	034198739
Bank Account	IBAN AT83 12000 10007734089

1.2 Capture and you are together or separately referred to as “**Parties**” or “**Party**” in these Terms.

## 2 Customer’s Legal Agreement with Capture

2.1 The binding legal “**Agreement**” between you and Capture consists of (i) these Terms, (ii) any Additional Terms set out above or referenced by the Purchase Order and (iii) the accepted “Purchase Order”. No binding contractual obligation or performance may be claimed by you from Capture without an accepted Purchase Order. In the event of a conflict or contradiction between these Terms and the Purchase Order, the Purchase Order shall prevail.



- 2.2 **Changes.** The present Terms in force at the time you consented to them will be applicable to your Purchase Order and shall form part of the Agreement. Before your next Purchase Order Capture may have updated these Terms or any Additional Term without notice to you.

PLEASE BE SURE TO ALWAYS REVIEW THE THEN CURRENT TERMS (AS PUBLISHED AT CAPTURE.EU OR REFERENCED ON THE PURCHASE ORDER ADVISORY) BEFORE ISSUING A PURCHASE ORDER.

If we modify the Terms during your current License Term, the modified version will be effective upon your next renewal of a License Term. In this case, if you object to the updated Terms, as your exclusive remedy, you may choose not to renew, including cancelling any License Term set to auto-renew under the modified Terms.

For the avoidance of doubt, any Purchase Order is subject to the version of these Terms in effect at the time of the issuance of the Purchase Order of Customer.

### 3 Products and Services

- 3.1 **Types of Capture Products.** These Terms govern Capture's commercially available Software and the related services (Software and Services are referred to as "**Products**" in the Agreement) Capture may provide:

"**Software**" products are described in the [Product and Services Description and Pricing Policy](#).

"**Services**": are support or maintenance type services such as training, deployment, customization, integration provided by Capture as part of the Product or as a separately ordered option. Services are described in the relevant Additional Terms (e.g. the [Product and Services Description and Pricing Policy](#)).

The Products and their permitted use are further described in Capture's standard documentation ("**Documentation**") as made available to you individually or published by Capture.

The provisions of these Terms apply to all Products.

- 3.2 **Ownership.** Provision of Software, Documentation or other Products is a LICENSE AND NOT A SALE. Products are made available on a limited license- and access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as "purchase" or "sale". Capture and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to the Products, their "look and feel", any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for Capture.
- 3.3 You understand and agree that any and all modifications to the Products – whether or not created by Capture, you or any third party and whether or not created in connection to your use of the Product or independently thereof – will be automatically owned by Capture without any notice or action necessary.
- 3.4 Results of services and activities performed by Capture to you within the scope of the Agreement will not be considered "work for hire", and results of services and activities will be owned by Capture.
- 3.5 **Feedback.** From time to time, you may choose to submit comments, information, questions, data, ideas, description of processes, or other information to Capture, including in the course of receiving Services ("**Feedback**"). Capture may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered your Confidential Information, and nothing in the Agreement limits Capture's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.
- 3.6 **Restrictions.** Except as otherwise expressly permitted in the Agreement, you will not: (a) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, or provide access to the Products



to a third party, (b) use the Products for the benefit of any third party, (c) incorporate any Products into a product or service you provide to a third party, (d) interfere with any license key mechanism in the Products or otherwise circumvent mechanisms in the Products intended to limit your use, (e) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Products, except as permitted by applicable law, (f) remove or obscure any proprietary or other notices contained in any Product, or (g) publicly disseminate information regarding the performance of the Products.

3.7 **Your License Rights.** Subject to the terms and conditions of these Terms, Capture grants you a non-exclusive, non-sublicensable and non-transferable, time-limited license to install and use the Software during the applicable License Term in accordance with the Agreement, your applicable Scope of License referred to on the relevant Purchase Order, and the Documentation.

3.8 **License Term; Automatic Renewals.** The term of each Software license (“**License Term**”) will be specified in your Purchase Order. Your License Term will end upon any termination of the Agreement.

Except as otherwise specified in your Purchase Order, all License Terms will **automatically renew** for periods equal to the current expiring License Term unless you terminate your license by notifying us in line with 9.1. In case of automatic renewal Customer will be charged at the lower of (i) the standard charges and rates if Supplier published such charges and rates and duly notified Customer at least 30 days before Customer’s right to terminate renewal expired, or (ii) the rates applicable based on the Agreement on the last day of the expiring License Term increased by 10%.

If you terminate, your license, you will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination.

3.9 **Perpetual License.** Capture does not offer perpetual licenses based on these Terms.

3.10 **Attribution.** In any use of the Software, you must not remove attributions, logos and hyperlinks and other marks placed by Capture in the Software or Documentation.

3.11 **Third Party Code.** The Software may include code and libraries licensed to us by third parties, including open source software. Such third party software are listed in the “About” or “Credits” or similar sections in the Software Products. See [Third Party Software Policy](#) for additional provisions regarding use of third-party code.

## 4 Services

4.1 Capture will provide the Services for the Products described in the Capture [Product and Services Description and Pricing Policy](#) (“**Services**”) during the period for which you have paid the applicable fee, i.e. during the License Term. Ordered Services will be provided at the level and during the Service Term specified in your Purchase Order. In case there is no Service Term specified on the Purchase Order, the Service Term is the same as the License Term.

4.2 The [Product and Services Description and Pricing Policy](#) may be modified by Capture from time to time to reflect process improvements or changing practices.

4.3 Capture is not responsible to provide Services or warranty or any obligation in respect of:

- (i) defects or errors resulting from any modifications of the Product made by any person other than Capture (including you) without Capture’s prior written consent;
- (ii) any release of the Product not supported by Capture;



- (iii) use of the Product other than in accordance with the Specification and/or Documentation, description, manual, version letter or notes provided by Capture;
- (iv) any defect or error in the equipment, platform, or in any software programs used in conjunction with the Product and not supplied by Capture;
- (v) defects or errors caused by the use of the Product on or with equipment or software programs not supplied by or approved in writing by Capture;
- (vi) act of God, fire, flood, war, act of violence or any other similar occurrence (i.e. Force Majeure Events);
- (vii) any modification or enhancement or Customization of the Product, which is not explicitly accepted in writing by Capture as covered by Services herein.
- (viii) any defects or errors caused by changes in the systems not in the control of Capture or the implementation of a system not approved in advance by Capture.
- (ix) any defects or errors revealed by a change of conditions external to Capture's Product, including but not limited to a change in cloud services, set of APIs used, change to the algorithms and higher level logic using those APIs, change to HW components or system configuration.

## 5 Purchase Conditions

- 5.1 **Purchase Process; Purchase Order.** The Purchase Order is a binding document that contains the specific details for a single business transaction between you and Capture, including but not limited to (a) usage limitations (e.g. maximum number of users, instances, etc.) (b) the License Term of Software ordered, and any (c) Services and options agreed, and (d) other restrictions or billable units, where by (a) to (d) together are referred in the Agreement as the **"Scope of License"**.

Product or Services renewal, or purchases you make to increase or upgrade your Scope of License are all considered as "Purchase Orders" under these Terms.

A Purchase Order is a document submitted by you to Capture. By signing and sending ("issuing") an Purchase Order, you – as Customer – send an offer to Capture to buy the Product(s) listed on your Purchase Order, such offer being subject to acceptance by Capture.

Capture may provide you a Purchase Order Advisory, which is guidance by Capture as to what it considered as acceptable transaction; however, the Purchase Order Advisory does not bind you or Capture in any way.

- 5.2 **Acceptance.** Capture will sign and send you your Purchase Order, which shall be regarded as acceptance of your offer (embodied by the Purchase Order) by Capture. Only upon such acceptance is the Agreement concluded and binding regarding the transaction. Your Purchase Order is irrevocable, but in the event your Purchase Order is not accepted buy us at the latest within 30 calendar days after we have received your Purchase Order, you are not bound to your purchase offer anymore.

Capture reserves the right to reject any Purchase Order on convenience (without providing reasoning). Parties hereby exclude the applicability of any trade or commercial practices to their relationship, including but not limited to any such practice agreed or adopted previously by the Parties or any other practice widely known and applied regularly in relation to contracts of similar subject.

For the avoidance of doubt, automatically renewing License Terms will not require a Purchase Order to be issued by you.



- 5.3 **Software Delivery.** Delivery is made electronically (by making available for download or sending via electronic mail at our sole discretion). We will deliver any applicable license keys and any download / login instructions and credentials, where such credentials are necessary. Delivery is made to the electronic mail address specified on the Purchase Order.
- 5.4 Delivery may be delayed until after we have received full payment of fees due on or before delivery. All deliveries under the Agreement will be electronic.
- 5.5 **Installation.** For the avoidance of doubt, unless otherwise defined in the [Product and Service Description and Pricing Policy](#) or your Purchase Order, you are responsible for installation and configuration of any Software, and you acknowledge that Capture has no further obligation with respect to the Software after delivery of the license keys and installers and any documentation promised.

## 6 Fees; Invoice; Taxes

- 6.1 **Fees.** Fees for Products are specified in EUR or USD and without any taxes. Capture's Fees are subject to change at any time and without notice, but you will always be charged the price which is displayed on the accepted Purchase Order.

- 6.2 All Fees must be paid for via bank transfer.

All amounts are non-refundable, non-cancelable and non-creditable, except as expressly set forth in these Terms. By making payments, you acknowledge that you are not relying on future availability of any Products beyond the current License Term or any Product upgrades or feature enhancements.

- 6.3 **Fee adjustment; True-up.** If you add resources (e.g. users, Products, recurring services, etc.) during your License Term that exceed the already paid Scope of License, we will charge you for the increased amount of such resources pursuant to the then-currently applicable rates in your next billing cycle. You are obliged to notify Capture in case of such excess use immediately.

After the end of each 12-month period of a License Term, Capture may request reconciliation of your Scope of Use to account for the total amount of resources (e.g. users, instances) you have added during those twelve months. You will provide a report detailing your use within 30 calendar days from such request and Capture will invoice any usage over your Scope of Use and adjusts your Fees for the current License Term.

You agree that we may bill your credit card or issue an official invoice and request for wire transfer for renewals, additional resources, and unpaid fees, as applicable.

IF CAPTURE PUBLISHED ITS STANDARD CHARGES AND FEES AT WWW.CAPTURE.EU THEN, IN CASE PARTIES' AGREEMENT DOES NOT CONTAIN A CERTAIN FEE AMOUNT OR A FEE IS NOT EXPLICITLY WAIVED BY CAPTURE IN WRITING, THE PUBLISHED STANDARD CHARGES AND FEES (AT THE TIME OF THE ORDER) SHALL BE APPLICABLE AND INVOICABLE BY CAPTURE.

- 6.4 **Invoice.** Unless otherwise stated on the invoice, you will be obliged to fulfil your payment obligations according to the following conditions:
- Payments are due within 15 calendar days from the issuance of the invoice,
  - Payments shall be made in currency indicated on the invoice,
  - Capture reserves the right to charge interest on late payments at a monthly rate equal to one percent (1%) above (i) the EURIBOR on the due date (if EUR) or (ii) the prime rate of the Wall Street Journal on the due date (if US dollars), OR the maximum rate permitted by applicable law, whichever is the lesser.



- 6.5 **Taxes; Duties.** Fees displayed or agreed exclude any taxes or duties payable in respect of the Products in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Capture, you must pay to Capture the amount of such taxes or duties in addition to any fees owed under the Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to Capture any such exemption information, and Capture will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

Products purchased may be subject to import duties or other taxes. Any additional charges for customs clearance must be borne by you; Capture has no control over these charges. Customs policies vary widely from country to country, so you should contact your local customs office for further information. Customer agrees to comply with all applicable international and national laws and regulations in relation to such Products and pay all customs fees, taxes or other government fees to the relevant authorities.

## 7 License Audits; Usage monitoring

- 7.1 At our request, you agree to provide a signed certification that you are using all Products in line with these Terms and the Agreement, including your Scope of License. You agree to allow us, or our authorized agent, to audit your use of the Products. We will provide you with at least 10 days advance notice prior to the audit, and the audit will be conducted during normal business hours. We will bear all out-of-pocket costs that we incur for the audit, unless the audit reveals that you have exceeded the Scope of License in which case you will have to bear the costs of the audit incurred at us. You will provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at your own cost. If you exceed your Scope of License by breaching the Agreement (in particular if you are in breach of section 6.3 or your excessive use is otherwise not permitted by the Agreement), we will invoice you for any past or ongoing excessive use, and you will pay the invoice promptly after receipt. You will be charged at the higher of (i) the standard charges and rates if Supplier published such charges and rates, or (ii) the rates applicable based on the affected Purchase Order(s) increased by 20%. This remedy is without prejudice to any other remedies available to Capture under law or the Agreement. To the extent we are obligated to do so, we may share audit results with certain of our third-party licensors or assign the audit rights specified in this Section to such licensors.
- 7.2 You acknowledge and accept that Capture may integrate tools or functions into the Products, that are capable of monitoring your usage by automatically collecting and sending us data relevant to your usage and Scope of License. Such data will be (i) anonymous and will be kept confidential.; and (ii) Capture may integrate functions and measures into the Products that prevent you exceeding your Scope of License (e.g. by blocking over-the-limit resource creation). Upon request we will provide information on such monitoring capabilities of each Product.

## 8 Warranty

- 8.1 With the exception of any function or capability based on section 7.2, Capture warrants that Software does not contain or will not contain any Trojan horses, "back doors", worms, viruses, or similar deceptive or destructive or disabling code, timer, clock, counter or other limiting design or routine, which was intentionally designed or is likely to cause a product to be erased, inoperable or otherwise incapable of being used in the full manner for which it was designed and licensed.



- 8.2 Except as expressly agreed above, all Software or Services are provided “AS IS” and “AS AVAILABLE” and Capture expressly disclaims all implied warranties and representations of fitness for a particular purpose, whether express, implied, or statutory. Supplier further disclaims any warranty that (a) the Software or Services will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results obtained from the use of the Software will be effective, accurate, or reliable; (c) the Software or Services will operate in combination with any other hardware, software, system, or data.
- 8.3 Capture warrants that it performs the Services with reasonable skill and care and diligence expectable from a provider of similar Products.
- 8.4 We specifically disclaim all liability for any actions resulting from your use of any Product. You may use and access the Products at your own discretion and risk, and you are solely responsible for any damage to your assets, business, system or loss of data that results from the use of and access to any Products.
- 8.5 **Provision of Network Access.** Certain Products are accessed by you via Internet or other networks and the operation of certain Products may require access to the Internet or other networks. You are always responsible for procuring and maintaining the necessary network connections, including, but not limited to, “browser” software that supports protocols used by Capture, or other protocols accepted by Capture, and to follow login procedures for services that support such protocols. Capture is not responsible for notifying you of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by Capture. Capture assumes no responsibility for the reliability or performance of any connections as described in this Section.
- 8.6 THE WARRANTIES GIVEN ABOVE, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED WHETHER BY STATUTE OR OTHERWISE RELATING TO THE SOFTWARE OR SERVICES TO THE FULLEST EXTENT PERMITTED BY LAW. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## 9 Term and Termination; Breach

- 9.1 **Term and Termination.** The Agreement between you and Capture is in effect for as long as you have a valid License Term (the “Term”), unless sooner terminated as permitted the Agreement.
- 9.1.1 The Agreement shall be considered terminated automatically, without any necessary legal steps on the calendar day followed by the expiration of the Term.
- 9.1.2 Either Party may terminate the Agreement before the expiration of the Term
- (a) if the other Party materially breaches any of the terms of the Agreement and does not cure the breach within thirty (30) calendar days after written notice of the breach.
  - (b) Either Party may also terminate the Agreement before the expiration of the Term if the other party ceases to operate, declares bankruptcy, or becomes insolvent or otherwise unable to meet its financial obligations.
- 9.1.3 You may terminate the Agreement at any time with notice to Capture, but you will not be entitled to any credits or refunds as a result of such “on convenience” termination for prepaid but unused Software or Services. Capture may terminate the Agreement on convenience by giving at least 60 calendar day notice in this case the last day of the Agreement will be the last day of the then current License Term.



- 9.1.4 Except where an exclusive remedy may be specified in the Agreement, the exercise by either Party of any remedy, including termination, will be without prejudice to any other remedies it may have under the Agreement, by law, or otherwise.
- 9.1.5 Once the Agreement terminates (either by termination or expired Term), you will no longer have any right to use or access any Products, or any information or materials that we make available to you under the Agreement, including Confidential Information disclosed to you by Capture. You are required to delete any of the foregoing from your systems as applicable (including any third-party systems operated on your behalf) and provide written certification to us that you have done so at our request.
- 9.2 **Survival**. The following provisions will survive any termination or expiration of the Agreement: Sections 3.2 (Ownership), 3.5 (Feedback), 3.6 (Restrictions), 7 (License Audits; Usage monitoring), 6.5 (Taxes), 6 (Fees; Invoice; Taxes), 9 (Term and Termination), 8.28.4 (Warranty Disclaimer), 11 (Limitation of Liability), 12 (Miscellaneous).
- 9.3 **Breach by You**. Without prejudice to our other rights, if you breach the Agreement in any way, or if we reasonably suspect that you have breached these Terms in any way, we may – without liability to you or any third party: (a) send you one or more formal warnings; (b) temporarily suspend your access to any Products; (c) permanently prohibit you from accessing the Products; (d) block computers using your IP address from accessing Products; (e) contact your internet services provider and request that they block your access to our Products; (f) bring court proceedings against you for breach of contract or otherwise.

You hereby indemnify us and undertake to keep us indemnified against any losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by us to a third party in settlement of a claim or dispute) incurred or suffered by us arising out of any breach by you of any provision of these terms and conditions, or arising out of any claim that you have breached any provision of these Terms.

## 10 Indemnity

THIS SECTION 10 (INDEMNITY) STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT RIGHTS IN CONNECTION WITH ANY PRODUCT OR OTHER ITEMS PROVIDED BY CAPTURE UNDER THE AGREEMENT.

- 10.1 We will defend you against any claim brought against you by a third party alleging that the Products, when used as authorized under this Agreement, infringes the copyrights of any person in any jurisdiction and under any applicable law (a “**Claim**”), and we will indemnify you and against any direct damages and reasonable costs finally awarded by a court of competent jurisdiction or agreed to settlement (including reasonable attorneys’ fees) arising out of a Claim, provided that we have received from you:
- (a) prompt written notice of the Claim which means no more than thirty (30) days after reception of the Claim;
  - (b) reasonable assistance in the defense and investigation of the claim, including providing us a copy of the Claim and all relevant evidence in your possession, custody or control; and
  - (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the Claim.

If your use of a Product is (or in our opinion is likely to be) enjoined, if required by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure a license for your continued use of the Product in accordance with the Agreement; (ii) substitute a substantially functionally similar Product; (iii) modify the Product in such a way that is no longer infringing, but in this case it must not result in the Product failing to conform with its Product Description and Documentation, or (iii) terminate your right to continue using the Product and refund prepaid amounts for the terminated portion of the License Term.





10.2 Capture's indemnification obligations above do not apply:

- (1) if the Product is modified by any party other than Capture, but solely to the extent the alleged infringement is caused by such modification;
- (2) if the Product is used in combination with any non-Capture product, software or equipment, but solely to the extent the alleged infringement is caused by such combination;
- (3) to unauthorized use of Products;
- (4) to any unsupported release of the Software; or
- (5) if you settle or make any admissions with respect to a Claim without Capture's prior written consent.

## 11 Limitation of Liability

11.1 Capture (and its suppliers) shall not be liable for any loss of use, lost or inaccurate data, failure of security mechanisms, interruption of business, costs of delay or any indirect, special, incidental, reliance or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of such damages in advance. In addition, we are not liable in respect of:

- any losses arising out of any event or events beyond our reasonable control.
- any loss of anticipated business.
- any loss of or damage to profits, income, revenue, or anticipated savings.
- any loss of use or production.
- any loss of management time or office time.
- any loss of business, contracts, commercial opportunities or goodwill.
- any loss or corruption of any data, database.
- any special, indirect or consequential loss or damage.
- any losses arising out of any acts or omissions of any hosting services provider, payment services provider or other third-party services provider.

11.2 Capture's aggregate liability to you (including our indemnification obligations) shall not exceed the higher of the amount actually paid by you to us for the first year under the last Purchase Order (net of taxes) immediately preceding the occurrence of the damage or EUR 5,000 (five-thousand euros).

11.3 To the maximum extent permitted by law, no suppliers of any third-party components included in the Products will be liable to you for any damages whatsoever. The Parties agree that the limitations specified in this section 11 (Limitation of Liability) will survive and apply even if any limited remedy specified in the Agreement is found to have failed of its essential purpose.

11.4 Capture will comply with laws applicable to it as a provider of the Products defined in the Agreement. Capture is not responsible for determining laws and regulations applicable to your business, including those relating to Products that you acquire on under the Agreement.

## 12 Miscellaneous

12.1 **No Resale:** You may not resell, lease, sub-license or provide usage rights to any Products to a third party without Capture's prior written consent.



- 12.2 **Confidentiality.** Except as otherwise set forth in the Agreement, each Party agrees that all code, inventions, know-how, business, technical and financial information disclosed to such Party ("**Receiving Party**") by the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure. Any Capture intellectual property, business- or technology information and any performance information relating to the Products shall be deemed Confidential Information of Capture without any marking or further designation.

Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information.

The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party).

The Receiving Party acknowledges that unauthorized disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, this Section shall not operate as a separate warranty with respect to the operation of any Product.

- 12.3 **Trademarks.** "**Capture**" mark and our logo are trademarks belonging to us. We give no permission for the use of these trademarks, and such use may constitute an infringement of our rights. The other registered and unregistered trademarks or service marks on our website are the property of their respective owners. Unless stated otherwise, we do not endorse and are not affiliated with any of the holders of any such rights and as such we cannot grant any license to exercise such rights.
- 12.4 **Jurisdiction.** Parties agree that they will resolve their incidental disputes by mutual agreements. In case an agreement is not reached within 15 days, the aggrieved Party may initiate court procedure. Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement shall be the court having jurisdiction and competence at the contracting Capture entity's registered seat.
- 12.5 **Exclusion of UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to the Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to the Agreement regardless of when or where adopted.
- 12.6 **Notices.** Any notice under the Agreement must be given in writing. We may provide notice to you via email or through your account. Our notices to you will be deemed given upon the first business day after we send it.
- 12.7 You may provide notice to us by post to the designated postal address of the contracting Capture entity. Your notices to us will be deemed given upon our receipt.
- 12.8 **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under the Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.



- 12.9 **Assignment.** You may not assign the Agreement without our prior written consent. We will not unreasonably withhold our consent if the assignee agrees to be bound by the terms and conditions of the Agreement. We may assign our rights and obligations under the Agreement (in whole or in part) without your consent.
- 12.10 **Products; Investment.** The Products are commercial computer software. The Products were developed fully at private expense. All other use is prohibited.
- 12.11 **Entire Agreement.** The Agreement is the entire agreement between you and Capture relating to the Products and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Products or any other subject matter covered by the Agreement.
- 12.12 **Severability.** If any provision of the Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

The Agreement may not be modified or amended by you without our written agreement (which may be withheld in our complete discretion without any requirement to provide any explanation). As used herein, “including” (and its variants) means “including without limitation” (and its variants).

- 12.13 **No waiver.** No failure or delay by the injured party to the Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. The Parties are independent contractors.
- 12.14 **Status of the Parties; No Exclusivity.** The Agreement shall not be construed as constituting either Party as a partner of the other or to create any other form of legal association that would give on Party the express or implied right, power or authority to create any duty or obligation of the other Party. Nothing in the Agreement shall be construed so as to create an exclusive business relationship between the Parties, or to restrict Capture’s use or sale of its Products. Each Party is free to enter into similar agreements with third parties to develop, acquire, or provide competitive products or services.

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## Product and Service Description and Pricing Policy

“Effective Date”: 1 December 2020

### 1 Jira-Clarity Integration by Capture

#### (A) Description

Packaged software integration module between Broadcom’s CA Clarity PPM (Clarity) and Atlassian’s Jira Software (Jira) to synchronize daily teamwork scope, progress and time reported. Jira-Clarity Integration by Capture supports the process of synchronizing projects created within Clarity, then sent over to Jira or vice-versa from where elaborated and updated data is synchronized back.

Packages available:

- Essential Package: Basic standard integration of one-one Clarity-Jira object, excluding setting up synchronizing hierarchy of objects.
- Professional Package: Combined integration of 2 or more standard objects, including setting up synchronizing hierarchy of these objects.
- Enterprise Package: Tailored integration, Individually priced one-off customizing on top of annual subscription fee of standard, inc. non-standard objects.

#### (B) Dependencies, conditions

Provision of Clarity and Jira licenses is not included, it is the responsibility of the Customer.

#### (C) Third Party Software

Third party software listed in the “About” or “Credits” or similar sections in the Software Products. The [Third Party Software Policy](#) applies to all such third party software or code.

#### (D) Services

Services included:

- Implementation: one-off standard implementation, initial setup and test run in the Customer’s environments (max. 3 environments) at the beginning of the first License Term.
- Limited Support: according to Terms and Conditions Related to Services below .
- Maintenance: including maintaining compatibility with the new releases of Clarity and Jira.

#### (E) Licensing and pricing

Number of users	Up to 500 users	501 – 2,000 users	More than 2,000 users
Essential Package	as per Purchase Order	as per Purchase Order	as per Purchase Order
Professional Package	as per Purchase Order	as per Purchase Order	as per Purchase Order
Enterprise Package	as per Purchase Order	as per Purchase Order	as per Purchase Order

Minimum license term: 1 year. Annual prepayment. Automatic renewal. Annual true-up.



## 2 WBS Editor for ServiceNow by Capture

### (A) Description

An extension to ServiceNow IT Business Management (ServiceNow) to visualize and enable editing of project tasks in a PMI standard work-breakdown-structure. Provides a structured, PMI standard overview of project task-breakdown with the display-version and allows Customers' project managers to even make adjustment in a structured form which is stored back to ServiceNow afterwards

### (B) Dependencies, conditions

Provision of ServiceNow licenses is not included, it is the responsibility of the Customer.

### (C) Third Party Software

Third party software listed in the "About" or "Credits" or similar sections in the Software Products. The [Third Party Software Policy](#) applies to all such third party software or code.

### (D) Services

Services included:

- Implementation: one-off standard implementation, initial setup and test run in the Customer's environments (max. 3 environments) at the beginning of the first License Term.
- Limited Support: according to Terms and Conditions Related to Services below .
- Maintenance: including maintaining compatibility with the new releases of ServiceNow.

### (E) Licensing and pricing

Number of users	Up to 500 users	501 – 2,000 users	More than 2,000 users
Price	as per Purchase Order	as per Purchase Order	as per Purchase Order

Minimum license term: 1 year. Annual prepayment. Automatic renewal. Annual true-up.



### 3 WBS Editor for Clarity by Capture

#### (A) Description

An extension to Broadcom CA Clarity PPM (Clarity) to visualize and enable editing of project tasks in a PMI standard work-breakdown-structure. Provides a structured, PMI standard overview of project task-breakdown with the display-version and allows Customers' project managers to even make adjustment in a structured form which is stored back to Clarity afterwards

#### (B) Dependencies, conditions

Provision of Clarity licenses is not included, it is the responsibility of the Customer.

#### (C) Third Party Software

Third party software listed in the "About" or "Credits" or similar sections in the Software Products. The [Third Party Software Policy](#) applies to all such third party software or code.

#### (D) Services

Services included:

- Implementation: one-off standard implementation, initial setup and test run in the Customer's environments (max. 3 environments) at the beginning of the first License Term.
- Limited Support: according to Terms and Conditions Related to Services below .
- Maintenance: including maintaining compatibility with the new releases of Clarity.

#### (E) Licensing and pricing

Number of users	Up to 500 users	501 – 2,000 users	More than 2,000 users
Price	as per Purchase Order	as per Purchase Order	as per Purchase Order

Minimum license term: 1 year. Annual prepayment. Automatic renewal. Annual true-up.



## 4 Clarity Control by Capture

### (A) Description

Compares configuration of different Clarity instances and deploys configurations automatically from one instance to another. Customers get a better overview on the changes made and the differences between instances and releases. Customers ensure that deployments are done automatically without manual work and bugs, and that all necessary details for documentation are captured.

### (B) Dependencies, conditions

Provision of Clarity licenses is not included, it is the responsibility of the Customer.

### (C) Third Party Software

Third party software listed in the “About” or “Credits” or similar sections in the Software Products. The [Third Party Software Policy](#) applies to all such third party software or code.

### (D) Services

Services included:

- Implementation: one-off standard implementation, initial setup and test run in the Customer’s environments (max. 3 environments) at the beginning of the first License Term.
- Limited Support: according to Terms and Conditions Related to Services below .
- Maintenance: including maintaining compatibility with the new releases of Clarity.

### (E) Licensing and pricing

Number of users	Up to 500 users	501 – 2,000 users	More than 2,000 users
Price	as per Purchase Order	as per Purchase Order	as per Purchase Order

Minimum license term: 1 year. Annual prepayment. Automatic renewal.



## 5 Terms and Conditions Related to Services

### 1. Limited Support

Within its Limited Support obligation during the warranty period or during the Service Term (whichever is longer) Capture will perform its best commercial efforts to investigate and fix any defects or incidents and release a new version of the Product. The service level promised is set out below as “response” times. No other service level is committed within the limited defect correction Service.

Only supported versions (as defined under “**Maintenance**” below) are covered by the Limited Support service.

**Table: Incidents and response times**

Incident severity levels	Descriptions	Standard response times
1	Severity level 1 is defined as an incident where there is widespread failure or complete unavailability of core functionality*. A level 1 issue with an identified workaround will be reclassified as a level 2 issue.	4 hours 0900-1700 CET Monday to Friday (excl. holidays)
2	Severity level 2 is defined as an incident where core functionality* continues to operate in a degraded fashion, although long-term productivity may be impacted. A level 2 issue with an identified workaround will be reclassified as a level 3 issue.	24 hours 0900-1700 CET Monday to Friday (excl. holidays)
3	Severity level 3 is defined as an incident that causes partial, non-critical loss of core functionality*. It may also be a major software defect that impacts the Customer when performing some actions and has no workaround.	2 business days
4	Severity level 4 is defined as: (a) request for information or query, (b) feature requests for the Product, (c) performance problems with little or no functionality impact, or (d) Software defects with workarounds or medium or low functionality impact.	N/A

*\* **Core functionality:** is functionality described in the Product Description or other written Documentation, which is essential for the Product to fulfill its business purpose.*

### 2. Maintenance

Within its maintenance obligation and based on a roadmap determined by Capture in its sole discretion, Capture will release and provide access to new versions of the Product. Such new versions may address minor improvements, bugfixes, security fixes, or new features or functions.

Maintenance does not cover any specific customer’s customizations or installations of the Product and is not intended to fix a defect or bug reported by any specific customer.

Maintenance **if expressly stated**, may include maintaining compatibility of the generic Capture Product with new versions of connected third party product.

#### 2.1 Security updates

For the latest major release, Supplier is committed to proactively provide fixes to newly discovered security vulnerabilities for the latest minor release.

For the next-to last major release, Supplier provides fixes to newly discovered security vulnerabilities upon request.

For all major releases within the last 12 months, security fixes are provided upon request for any minor version.





For example, if the versions 3.4.2, 3.5.0, 3.5.1, 4.0.0, 4.1.0 and 4.1.1 were released in the past 12 months, 4.1.2 will be released proactively, and 3.5.2 and 4.0.1 will only be released upon request. There won't be a security fix for 3.4.2, since the minor version (3.4.0) of this patch release was released more than 12 months ago.



## 2.2 Functional updates

If the incident (defect) is related to a change in the underlying environment that breaks product functionality (e.g. API changes at a cloud provider) and there is no workaround, then the same policy applies as for Security updates.

If the defect isn't regressive (i.e. the issue was already present at the time of the release), then the fix will be provided only on the latest minor version of a given supported major release.

A resolution may be delivered as a workaround or an upgrade to a newer minor version within the major release.

Updates for occasional special-purpose builds (marked with an alphanumeric suffix in the version number) are not covered by the general terms.

## 3. HelpDesk and Incident handling by Capture

Incidents must be reported as tickets in the ticketing system provided by and operated by Capture. Capture uses the Mantis Bug Tracker ("Mantis") system currently but may change to another system in its sole discretion. Ticketing system current address: [ticketing.capture.eu](https://ticketing.capture.eu).

Incident severity level will be proposed by Customer based on the Table above when creating the incident ticket. Response times start at ticket creation date and timestamp unless information is insufficient to start investigation. Response means incident investigation and status report within the response time. Incident solution times are not committed or guaranteed. Any indication for a solution is for information purposes only.

## 4. Versioning

Supplier products are released with a version number following the MAJOR.MINOR.PATCH scheme, for example 1.2.3.

Major releases may break compatibility, specifically they can remove support for features present in earlier major releases. Minor releases can add new features, discontinue experimental features of earlier releases, or mark existing features deprecated.

Patch releases may include fixes for defects, security fixes or add compatibility updates in case external dependencies are changed.

Incidents can be reported for all patch releases within the last 12 months (in case there are fewer than a major release per year, the latest patch versions on the two most recent major releases are supported).



## Third Party Software Policy

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**“Effective Date”:** 1 December 2020

This document (the **“Third Party Software Policy”** or **“this Policy”**) is an Additional Term document referenced by Capture’s General License and Service Terms and Conditions (**“Terms”**). If not otherwise defined herein, terms used shall have meanings defined in the General Terms.

The conditions outlined below are valid starting on the Effective Date and are subject to change.

The Products may contain software and libraries that we license from third parties. Some of these licenses require us to flow certain terms down to you.

### 1 Open Source Software in the Products

The Products may include components subject to the terms and conditions of “open source” software licenses. To the extent applicable, we will identify open source software included in a Product in or through the Product itself. Some of these licenses may require us to provide the open source software to you on the terms of the open source license instead of the terms of the Agreement. In that case, the terms of the open source license will apply, and you will have the rights granted in such licenses to the open source software itself, such as access to source code, right to make modifications, and right to reverse engineer.

Notwithstanding the foregoing, if you are using the Products in the form provided to you, in accordance with your permitted Scope of License, with no distribution of software to third parties, then none of these open source licenses impose any obligations on you beyond what is stated in the Agreement.

### 2 Commercial Third-Party software in the Products.

- 2.1 The Products may also include components that we license commercially from third parties (**“Commercial Components”**). For the avoidance of doubt, all of the restrictions for the Products in the Agreement also apply to Commercial Components. Commercial Components are also subject to some additional requirements as set forth below.
- 2.2 You may use Commercial Components only in conjunction with, as part of, and through the Products as provided by Capture. You may not install, access, configure or use any Commercial Components (including any APIs, tools, databases or other aspects any Commercial Components) separately or independently of the rest of the Product, whether for production, technical support or any other purposes, or otherwise attempt to gain direct access to any portions of the Commercial Components, or permit anyone else (including your customers) to do any of these things.
- 2.3 You understand that the applicable Commercial Component Licensor retains all ownership and intellectual property rights to the Commercial Component. Commercial Component Licensors (and any other third-party licensors of any components of the Products) are intended third party beneficiaries of the Agreement with respect to the items they license and may enforce the Agreement directly against you. However, to be clear, Commercial Component Licensors do not assume any of Capture's obligations under the Agreement.