

PRODUCT TERMS (ENGLISH LAW) | RETAIN INTERNATIONAL

These Product Terms apply whenever Customer licenses Retain software (including its individual components and modules). Retain is a SaaS Product as defined in the Master Terms. These Product Terms are incorporated into the Product Order and, together with the Master Terms and the Professional Services Terms (if applicable), form part of the Agreement between Capita and Customer. In some cases additional or modified rights to those provided in these Product Terms will be included in a Product Order.

1. **DEFINITIONS AND INTERPRETATION.**

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

“Administrator Users” means those Authorised Users that have been granted administrative privileges/access rights and for whom administrator licences have been purchased as detailed in the Product Order.

“Authorised Purpose” has the meaning given to it in Paragraph 2.2 below.

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

“Hotline Support” has the meaning given to it in Paragraph 4.1.1 below.

“Maintenance Release” means any update, release, patch or other adaption or modification of the Product, including any updated Documentation, that Capita may provide to Customer from time to time as part of the Support Services during the Support Period, which may contain amongst other things, error corrections, enhancements, improvements, or otherwise amend the Product, but does not include any New Version or New Module.

“Master Terms” means the Master Terms that, together with the Product Order, these Product Terms and, if applicable, the Professional Services Terms, form the Agreement between Capita and Customer, and which can be found at the following URL: <https://www.capitasoftware.com/customertermsandconditions>

“New Module” means any new software component, module or part of the Product that provides additional functionality to the Product that Capita may from time to time introduce and market generally as a distinct licensed product and which Capita may make available to Customer at an additional cost

under a separate agreement.

“New Version” means any new version of the Product (other than a New Module) that Capita may from time to time introduce and market generally as a distinct licensed product and which Capita may, only if New Versions are included as part of the Support Services as indicated in the Product Order, provide to Customer from time to time as part of the Support Services during the Usage Period, or, if New Versions are not included as part of the Support Services as indicated in the Product Order, make available to Customer at an additional cost under a separate agreement.

“Support Hours” means 09:00 to 17:30 local UK time on each Business Day.

“Territory” means the territory set out in the Product Order.

1.2 References in these Product Terms to Paragraphs shall be to the paragraphs of these Product Terms or any annexures. References in these Product Terms to Sections shall be to the sections of the Master Terms.

2. **USAGE RIGHTS.**

2.1 **Licence Grant.** Subject to and in consideration of the Customer’s payment of the Licence Fees and compliance with all other terms and conditions of the Agreement, Capita grants to Customer during the applicable Usage Periods specified in the Product Order, a non-exclusive, non-transferable, non-sublicensable and revocable licence for Customer and its Listed Affiliates to use, solely by and through the Authorised Users, the Product(s) (in object code form only) listed in the Product Order (including any Maintenance Release and any New Version provided to Customer pursuant to the provision of Support Services) and the relevant Documentation, within the Territory and solely for the Authorised Purpose.

- 2.2 Authorised Purpose. The “**Authorised Purpose**” is the use of the Product(s) for the internal business operations of Customer and its Listed Affiliates for resource planning and talent management purposes.
- 2.3 Scope of Licensed Access and Use. The total number of Authorised Users and Administrator Users will not exceed the numbers set out in the Product Order, except as expressly agreed by the Parties and subject to any appropriate adjustment of the Licence Fees payable under the Agreement.
3. **HOSTING**
- 3.1 If the Product Order states that Capita or a Hosting Provider will host the Product(s), Capita or such Hosting Provider (as applicable) will be responsible for the hosting environment for the Product(s) (including its individual components and modules). If the Product Order does not state that Capita or a Hosting Provider will host the Product(s), then Customer shall be responsible for hosting the Product(s) itself or procuring a Hosting Provider to host the Product(s).
4. **SUPPORT SERVICES AND PROFESSIONAL SERVICES.**
- 4.1 Support Services. Where specified in a Product Order, and subject to the terms of the Agreement and the payment of all charges payable under the Agreement (including the Support Fees), during the Support Period Capita will use reasonable endeavours to provide the following Support Services during the Support Hours:
- 4.1.1 a help desk to provide:
- (a) technical support to Administrator Users to help overcome a problem which is preventing use of the Product(s) as a result of a failure of the Product(s) to perform in accordance with the Documentation; and
 - (b) reasonable support to Administrator Users in relation to the deployment of Maintenance Releases,
- 4.1.2 diagnosis and, where reasonably possible, correction of critical errors in the Product(s) or assistance to overcome specific problems with the Product(s);
- 4.1.3 the issuing of Maintenance Releases (including updated Documentation) as and when required and in whatever form (including by way of a local fix or patch of the Product(s) or a temporary bypass solution) at the absolute discretion of Capita;
- 4.1.4 information on availability of New Versions and New Modules, enhancements to and modifications of the Product(s) (which may be made available via a Product roadmap); and
- 4.1.5 only if indicated on the Product Order, the issuing of New Versions (including updated Documentation) as and when Capita, at its absolute discretion, introduces and markets generally such New Versions.
- 4.2 Hotline Support.
- 4.2.1 In order to obtain Hotline Support, Customer must:
- (a) contact Capita by telephone (+44-20-7538-9237) or by email (support@retaininternational.com) (or such other contact details as notified to Customer from time to time);
 - (b) provide Capita with sufficient information to enable Capita to reproduce the problem; and
 - (c) confirm in writing (or fax or email) within forty eight (48) hours any requests submitted by Customer orally.
- 4.2.2 When the Hotline Support is used for general advice regarding the use of the Product(s), Capita reserves the right to treat this outside the scope of the Support Services, and to charge Customer additional fees. Customer

will be informed before any such additional fees are incurred. Such services shall be deemed to be Professional Services and shall be subject to Professional Services Terms and the Professional Services section in the Product Order.

(i) for Professional Services in respect of assistance to Customer to support the deployment of a New Version; and

(ii) in respect of the licence of a New Module.

4.3 Maintenance Releases.

4.3.1 All Maintenance Releases provided by Capita to Customer are deemed to be part of the applicable Product. For the avoidance of doubt, the cost of the provision of Maintenance Releases is included in the Support Fees payable for the Support Services, but excludes any sums payable by Customer:

(a) for Professional Services in respect of assistance to Customer to support the deployment of a Maintenance Release; and

(b) in respect of the licence of a New Module.

4.3.2 Once a Maintenance Release has been placed into production use by Customer, Customer shall, on Capita's request, certify in writing to Capita that all copies of the Product, or any part of the Product, which is superseded by that Maintenance Release then in its possession, custody or control, have been deleted by Customer.

4.4 New Versions.

4.4.1 Where New Versions are included as part of the Support Services (as indicated in the Product Order):

(a) any New Versions provided by Capita to Customer are deemed to be part of the applicable Product; and

(b) the cost of the provision of New Versions is included in the Support Fees payable for the Support Services, but excludes any sums payable by Customer:

4.4.2 Where New Versions are not included as part of the Support Services (as indicated in the Product Order), Customer will need to enter into a new agreement with Capita for such New Version.

4.4.3 Once a New Version has been placed into production use by Customer, Customer shall, on Capita's request, certify in writing to Capita that all copies of the Product, or any part of the Product, which is superseded by that New Version then in its possession, custody or control, have been deleted by Customer.

4.5 New Modules. Customer acknowledges and agrees that any New Modules of the Product(s) that Capita may, in its sole discretion, release from time to time are not included as part of the Support Services. Customer will need to enter into a new agreement with Capita for such New Module.

4.6 Current Release. Except as otherwise expressly agreed by Capita and Customer in writing, Customer must run only the current Maintenance Release level of the Product(s) that Capita has made available to its customers. Customer shall install all Maintenance Releases as soon as reasonably possible from the date they are made available by Capita.

4.7 Additional Support and Maintenance.

4.7.1 Customer may from time to time request Capita to supply additional support and maintenance services outside the scope of the Support Services, including but not limited to:

(a) any support in relation to non-Product software, accessories, attachments, machines, systems or other devices;

- (b) any attempts to rectify lost or corrupted data (whether or not successful);
- (c) support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Product not made by Capita, or due to Customer's systems or operating environments, or third party information or materials;
- (d) any support in relation to a Product, or any versions of a Product, that Capita has advised Customer are unsupported;
- (e) faults caused by use of the Product outside its design or other specifications, or outside the scope of the Documentation;
- (f) issues caused by Customer's failure to follow Capita's instructions or specifications;
- (g) diagnosis and/or rectification of problems not associated with the Product(s);
- (h) support required or made more difficult because of any failure by Customer to maintain adequate backups;
- (i) any support in relation to a Product not located in or conforming to the specified operating environment;
- (j) issues caused by accidents, modifications, support, relocation or misuse of a Product not attributable to Capita;
- (k) Customer's networking or operating environment; and
- (l) any support in relation to Customer's deployment of any New Version or New Module.

4.7.2 In the circumstances set out in Paragraph 4.7.1 above, Capita shall use its reasonable endeavours to comply with Customer's request, but Customer acknowledges that Capita's ability to supply such additional services shall depend on the availability of appropriate resources at the time in question.

4.7.3 Where Capita agrees to provide additional services in accordance with Paragraph 4.7.2 above additional fees may apply, and such agreement shall be documented in an order for Professional Services, which shall be made under, and shall incorporate, the terms of the Agreement.

4.8 Professional Services. Subject to payment by Customer of all charges payable under the Agreement (including the applicable Professional Services Fees) and Customer's compliance with its obligations under the Agreement, Capita shall perform Professional Services if, and as, specified in the Product Order or as may be agreed in writing between the Parties from time to time, in each case in accordance with the Professional Services Terms.

5. CHANGES.

5.1 Changes to Products. Capita may modify Product(s) from time to time but will not change their fundamental nature, except in accordance with Paragraph 5.2 below. Capita will use reasonable efforts to notify Customer of significant changes to Product(s).

5.2 Obsolescence.

5.2.1 Capita may obsolete:

- (a) a prior version of a Product on at least six (6) months' prior notice following the general availability of a Maintenance Release or New Version; and
- (b) any Product as a whole or any Support Services on at least twenty four (24) months' prior notice.

5.2.2 Capita will have no obligation to

provide Support Services in respect of obsolete Products or versions of Products at the end of the notice periods set out in Paragraph 5.2.1 above.

6. **DELIVERY**

6.1 Capita shall deliver a copy of the Product(s) in machine readable form, on the media to the location specified in the Product Order. The Documentation, if any, shall also be delivered to the location or transmitted by email to the address specified in the Product Order.

6.2 The Customer is responsible for ensuring that the equipment is installed and fully operational:

6.2.1 prior to installation and use of the Product(s); and

6.2.2 where the Product Order states that Capita shall provide Professional Services which include installation of the Product(s), prior to the scheduled date of installation of such Product(s).

6.3 Risk in the media and Product(s) will pass to the Customer on delivery to the Customer.

7. **WARRANTY PERIOD.**

7.1 **Warranty Period.**

7.1.1 Capita offers an extended warranty period in connection with Customer's use of Retain SaaS Products and the warranty period set out in the first sentence of Section 10.2 (*Representations and Warranties*) of the Master Terms shall be amended as set out in Paragraph 7.1.2 below.

7.1.2 When Customer licenses Retain SaaS Products, the first sentence of Section 10.2 (*Representations and Warranties*) of the Master Terms shall, solely in relation to the Retain SaaS Product, be deleted and replaced with the following:

"Capita warrants that the Product (excluding Maintenance Releases and New Versions) will conform to and perform in accordance

with the Documentation in all material respects for thirty (30) days following the earlier of: (a) where Customer has ordered Professional Services in connection with the initial installation and set-up of the Product (excluding Maintenance Releases and New Versions), acceptance of the Product by Customer (as described in the Product Order and the Professional Services Terms); (b) first use by Customer of the Product (excluding Maintenance Releases and New Versions) in a production environment; and (c) the expiry of ninety (90) days after the date on which the Product (excluding Maintenance Releases and New Versions) is first made available by Capita for electronic download by Customer."

7.1.3 For clarity, the remainder of Section 10 (*Representations and Warranties*) of the Master Terms shall continue to apply.

8. **TERMINATION.**

8.1 The Parties' termination rights are set out in Section 11 of the Master Terms.

9. **DATA PROTECTION.**

9.1 **Scope and status of the Parties.**

9.1.1 In this Paragraph 9, the terms "controller", "data subject", "personal data", "personal data breach", "process" ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the EU General Data Protection Regulation (EU)2016/679 (the "GDPR"). "Data Protection Laws" means the GDPR, the UK Data Protection Act 2018 and any replacement or supplementary legislation applicable to the processing of personal data applicable in the European Union or the United Kingdom from time to time.

- 9.1.2 Capita acts as a data processor on behalf of Customer with respect to any personal data which is processed by Capita on behalf of Customer or any Listed Affiliates (each a “**Customer Group Member**”) under the Product Order to the extent that it relates to Retain (including in relation to any Support Services and Professional Services to be performed by Capita in relation to Retain under such Product Order) (the “**Customer Personal Data**”). Customer may act as controller or processor in respect to Customer Personal Data. This Paragraph 9 sets out Capita’s data processing obligations to the Customer in respect of Customer Personal Data. Details of the applicable processing activities (including categories of personal data and data subjects) are described in the Annex to these Product Terms.
- 9.1.3 Customer warrants, represents and undertakes to Capita that it (or the applicable Customer Group Member):
- (a) will comply at all times with the Data Protection Laws;
 - (b) has all necessary consents and notices in place to enable lawful transfer (including international transfers, if any) of Customer Personal Data to Capita for the duration of the Agreement (including without limitation, lawful grounds for processing); and
 - (c) will not transfer any Customer Personal Data to Capita in connection with the provision of Services by Capita, other than Customer Personal Data of Customer employees to the extent necessary for such employees to liaise with Capita in respect of such Services.
- 9.2 Capita’s obligations. Where Capita processes Customer Personal Data under or in connection with the performance of its obligations under the applicable Product Order, Capita shall:
- 9.2.1 process the Customer Personal Data only in accordance with the Agreement and with other mutually agreed and documented instructions of the Customer (including in relation to any international transfer of Customer Personal Data made in accordance with Paragraph 9.3);
 - 9.2.2 implement appropriate technical and organizational measures necessary to meet the requirements of Article 32 of the GDPR;
 - 9.2.3 ensure Capita staff authorized to process Customer Personal Data are subject to appropriate confidentiality obligations;
 - 9.2.4 not engage sub-processors to process Customer Personal Data without Customer’s prior written consent (such consent not to be unreasonably withheld or delayed). For the purpose of this Paragraph 9.2.4, Customer hereby consents to Capita retaining those entities listed at Paragraph 1 (approved sub-processors) of the Annex to these Product Terms as sub-processors to process Customer Personal Data. Capita shall, in relation to any sub-processor appointed in accordance with this Paragraph 9.2.4:
 - (a) ensure that equivalent requirements to those set out in this Paragraph 9.2 are imposed on the sub-processor through a written agreement; and
 - (b) remain liable to Customer for the performance of the sub-processor’s obligations;
 - 9.2.5 taking into account the nature of the processing and the information available to Capita, reasonably assist Customer to fulfil Customer’s obligations under the Data Protection Laws:
 - (a) to respond to data subjects’ requests exercising their rights; and

- (b) with respect to security, data protection impact assessments, data breach notifications and consultations with data protection supervisory authorities;

9.2.6 save as required by law, at Customer’s option, either delete or return Customer Personal Data in Capita’s possession to Customer on expiry or termination of the Agreement;

9.2.7 make available to Customer such information as Customer reasonably requests and Capita is reasonably able to provide, and permit and contribute to such audits, including inspections, conducted by Customer (or agreed auditors other than Capita’s competitors), as is necessary to demonstrate Capita’s compliance with its obligations set out in this Paragraph 9. Customer will give reasonable notice of any audit, ensure that any audit does not disrupt Capita’s business operations, ensure any agreed auditors (if any) are bound by appropriate (in Capita’s opinion) confidentiality obligations to protect Capita’s confidential information, and will be fully liable for any associated costs (including those of Capita); and

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

Capita shall be entitled to charge Customer, at Capita’s then-current rate card and expenses policy, for any Capita effort or costs under Paragraph 9.2.5 to 9.2.8 (inclusive).

9.3 International transfers. Capita shall not transfer Customer Personal Data to any country or territory outside the European Economic Area (EEA) without Customer’s prior written consent (such consent not to be unreasonably withheld or delayed). Any transfers authorised in accordance with this Paragraph 9.3 shall be subject to appropriate safeguards or derogations under Data Protection Laws. Where requested to do so by Capita, Customer

shall execute the appropriate approved standard contractual clauses for transfers of Customer Personal Data from the EEA or the UK to third countries (“**Standard Contractual Clauses**”) as data exporter with the applicable Capita data importer entity and, where relevant, procure that the relevant data controller entity does the same. Customer agrees that if, pursuant to the Standard Contractual Clauses, Capita is obliged to provide a copy of any applicable sub-processor agreement, such agreement may have all commercial information, or clauses unrelated to the Standard Contractual Clauses, removed by Capita beforehand and that such copies will be provided by Capita in a manner to be determined in its discretion and only upon request by Customer.

9.4 Indemnity.

9.4.1 Subject to the limitations and exclusions of liability set out in the Agreement, each party shall indemnify and keep indemnified the other party against any liability, fines, claims, demands, expenses and costs (including reasonable legal fees) arising as a result of:

- (a) any breach by the other party (including in the case of Customer, by any Customer Group Member and any other controller of the Customer Personal Data) of its obligations under Data Protection Laws; and/or

- (b) where Capita is the indemnified party, Capita acting in accordance with any instruction, policy or procedure of any Customer Group Member.

9.4.2 Subject to the limitations and exclusions of liability set out in the Agreement, Customer shall defend and indemnify, at its own expense, Capita from and against any third party claim against Capita to the extent arising out of or in connection with Customer’s breach of Paragraph 9.1.3(b) or Paragraph 9.1.3(c).

ANNEX

PERSONAL DATA AND PROCESSING ACTIVITY

1. **Approved sub-processors**

- Microsoft Corporation and its Affiliates
- Capita’s Affiliates

2. **Processing Activities**

Subject matter of the processing	Capita will on occasions require access to the database in order to diagnose and remedy issues as a result of a Hotline Support call.
Duration of the processing	Any screen shots or data sent to Capita during this processing will be kept for the duration of the fault ticket and securely deleted within sixty (60) days of the ticket being closed.
Nature and purpose of the processing	Provision of Support Services and Professional Services, the data will not be changed and only analysed for fault resolution purposes.
Type of personal data processed	Customer Personal Data that is held within the Retain database which typically includes names, skill sets and other Personal Information that is needed to schedule resource.
Categories of data subjects	Staff and/or contracted resource.
Obligations and rights of Customer	The obligations and rights of Customer Group Members are set out in the Agreement.