

PRODUCT TERMS – SaaS (US) | RETAIN INTERNATIONAL

These Product Terms apply whenever Customer accesses or uses Capita’s Retain International software (including its individual components and modules) as 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 Capitalized terms used in these Product Terms but not defined below are defined in the Master Terms.

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

“Authorized Purpose” has the meaning given to it in Section 2.2 below.

“Hotline Support” has the meaning given to it in Section 3.1 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 Usage 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 Product Order.

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

“Support Hours” means 09:30 to 17:00 (GMT) Monday to Friday, excluding bank or national holidays in the United Kingdom.

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

2. USAGE RIGHTS.

2.1 **License Grant.** Subject to and conditioned on Customer’s payment of the License Fees and compliance with all other terms and conditions of the Agreement, Capita grants to Customer during the Usage Period specified in the applicable Product Order, a non-exclusive, non-transferable, non-sublicensable license for Customer and its Listed Affiliates to use the Products (in object code form only) listed on the applicable 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 solely for the Authorized Purpose.
- 2.2 Authorized Purpose. The “**Authorized Purpose**” is 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 Authorized 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 License Fees payable under the Agreement.
3. **SUPPORT AND MAINTENANCE.**
- 3.1 Support Services. Where specified in a Product Order, and subject to the terms of the Agreement and the payment of the separate Support Fees, during the Support Period Capita will provide the following Support Services during the Support Hours: (a) a help desk to provide (i) technical support to Administrator Users to help overcome a problem which is preventing use of the Product as a result of a failure of the Product to perform in accordance with the Documentation, and (ii) reasonable support to Administrator Users in relation to the deployment of Maintenance Releases ((i) and (ii) together “**Hotline Support**”); (b) diagnosis and, where reasonably possible, correction of critical errors in the Product or assistance to overcome specific Product problems; (c) 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 Products or a temporary bypass solution) in the absolute discretion of Capita; (d) information on availability of New Versions and New Modules, enhancements to and modifications of the Product (which may be made available via a Product roadmap); and (e) only if indicated on the applicable Product Order, the issuing of New Versions (including updated Documentation) as and when Capita, in its absolute discretion, introduces and markets generally such New Versions.
- 3.2 Hotline Support. 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. When the Hotline Support is used for general advice regarding the use of the Product, 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.
- 3.3 Maintenance Releases. 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: (a) any sums payable by Customer for Professional Services in respect of assistance to Customer to support the deployment of a Maintenance Release; and (b) any sums payable by Customer in respect of the license of a New Module. 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.
- 3.4 New Versions. (a) Where New Versions are included as part of the Support Services (as indicated on the applicable Product Order): (i) any New Versions provided by Capita to Customer are deemed to be part of the applicable Product; (ii) the cost of the provision of New Versions is included in the Support Fees payable for the Support

- Services, but excludes: (A) any sums payable by Customer for Professional Services in respect of assistance to Customer to support the deployment of a New Version; and (B) any sums payable by Customer in respect of the license of a New Module. (b) Where New Versions are not included as part of the Support Services (as indicated on the applicable Product Order), fees for any New Version and any related Professional Services shall be charged and invoiced to Customer following acceptance by Capita of a new Product Order for such New Version. (c) 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.
- 3.5 Exceptions. Capita shall have no obligation to provide the Support Services at any times outside the Support Hours or where faults arise from: (a) misuse, incorrect use of or damage to the Products from whatever cause (other than any act or omission by Capita), including failure or fluctuation of electrical power; (b) failure to maintain the necessary environmental conditions and/or minimum equipment specifications for use of the Products (if any) made available by Capita; (c) use of the Products in combination with any equipment or software not provided by Capita or not designated by Capita for use with the Products, or any fault in any such equipment or software; (d) any breach of Customer's obligations under the Agreement howsoever arising; (e) having the Products maintained by a third party unless otherwise agreed in writing by Capita; (f) any modification not authorized by Capita; (g) operator error; (h) failure by Customer to ensure that its Authorized Users are provided first line technical support; or (i) failure by Customer to install and run a Maintenance Release in accordance with Section 3.7 below.
- 3.6 New Modules. Customer acknowledges and agrees that any New Modules of the
- Products that Capita may, in its sole discretion, release from time to time are not included as part of the Support Services. Fees for any New Module and any related Professional Services shall be charged and invoiced to Customer following acceptance by Capita of a new Product Order for such New Module.
- 3.7 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 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.
- 3.8 Customer Responsibilities. Customer shall: (a) ensure that its personnel are adequately trained in the correct use of the Products and are provided with first line technical support in connection with use of the Products; (b) comply with Capita's reasonable instructions concerning the use, modification, control, and testing of the Products (including, where appropriate, operational and environmental conditions); (c) where required for the proper performance of the Support Services by Capita, give Capita such access as may in Capita's opinion be necessary to Customer's or a Hosting Provider's premises, facilities, and system; and (d) provide Capita with all information reasonably requested by Capita from time to time relating to Customer's use of the Products, including information on Customer's hardware, network and systems.
- 3.9 Additional Support and Maintenance. 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; (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. In such circumstances, Capita shall use its reasonable endeavors 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. Where Capita agrees to provide such additional services 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.
- 3.10 **Reinstatement fees.** If the Support Services are terminated, and Customer wishes to have them reinstated, Capita may apply reinstatement fees in addition to the standard fees for Support Services. Such reinstatement fees shall be calculated as the amount of Support Fees that would have been payable in the period from termination of the Support Services until the recommencement of the Support Services had the Support Services not been terminated.
4. **CHANGES.**
- 4.1 **Changes to Products.** Capita may modify Products from time to time but will not change their fundamental nature, except in accordance with Section 4.2 below. Capita will use reasonable efforts to notify Customer of significant changes to Products.
- 4.2 **Obsolescence.** 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. Capita will have no obligation to provide Support Services in respect of obsolete Products or versions of Products at the end of such notice periods.
- 4.3 **Changes to Support Services.** Capita may, on prior notice to Customer, make changes to the Support Services, provided such changes do not have a material adverse effect on Customer's business operations.
5. **WARRANTY PERIOD.**
- 5.1 **Warranty Period.** Capita offers an extended warranty period in connection with Customer's use of Retain and the warranty period set out in the first sentence of Section 12.2 (*Representations and Warranties*) of the Master Terms shall not apply to Retain. When Customer licenses Retain the first sentence of Section 12.2 (*Representations and Warranties*) of the Master Terms shall 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); (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.” For clarity, the remainder of Section 12 (*Representations and Warranties*) of the Master Terms shall continue to apply.

6. **TERMINATION.**

6.1 **Termination in Part.** Where Capita has a right to terminate a Product Order, Capita may, at its option, elect to terminate the Product Order with respect to a particular category or categories of Services. Where Capita elects to terminate a Product Order with respect to a particular category or categories of Services such partial termination shall not affect the continuation of the Usage Rights.

6.2 **Termination of Support Services.** Termination of Support Services: (a) by Customer for any reason; or (b) by Capita in accordance with Section 4.2 above, shall not affect the continuation of the Usage Rights.

6.3 **Consequences of Termination.** On termination of a Product Order except as described in Sections 6.1 or 6.2 above: (a) all Usage Rights granted to Customer under the Product Order shall cease; (b) Customer shall cease all activities authorized by the Usage Rights; and (c) Customer shall immediately pay to Capita any sums due to Capita.

7. **DATA PROTECTION.**

7.1 Where personal data is stored, transferred, processed under this Agreement, Capita’s standard Data Processing Addendum in Annex 2 of the Product Order or other such terms identified as appropriate by Capita shall govern such storage, transfer and processing (including international transfer) of such Personal Information, as applicable.