

SUPPLIER TERMS - SAAS (ENGLISH LAW) | RETAIN INTERNATIONAL

These Supplier Terms incorporate the current (as at the Agreement Effective Date) versions of: (i) the Master Terms; (ii) the Product Terms for the relevant Products set out in these Supplier Terms; and (iii) where any Professional Services are performed in accordance with these Supplier Terms, the Professional Services Terms, all of which can be found at the following URL: <https://www.retaininternational.com/Terms-and-Conditions> (the “URL Terms”). These Supplier Terms, together with the URL Terms, and the G-Cloud Order Form constitute the “Agreement” between Retain and the Customer specified in these Supplier Terms. References to “Product Order” in the URL terms mean these “Supplier Terms”.

The Agreement commences on the Agreement Effective Date specified in Part A below and continues until the Usage Period expires or the Agreement is terminated in accordance with its terms.

The Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous communications, understandings, and agreements concerning the subject matter hereof, whether written or oral. Each Party agrees that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. **The parties acknowledge that the Customer may be required to issue a purchase order in order to enable Retain to invoice for any fees and in any such circumstances this Agreement shall take precedence to any such purchase order terms.**

Capitalised terms used in these Supplier Terms are defined in the Master Terms and/or the Product Terms and/or the Professional Services Terms.

PART A: ORDER AND PARTY INFORMATION

ORDER INFORMATION	
AGREEMENT REFERENCE:	Refer to G:Cloud Order Form
DATE ORDER PLACED:	Refer to G:Cloud Order Form
AGREEMENT EFFECTIVE DATE:	Refer to G:Cloud Order Form

CUSTOMER INFORMATION		
CUSTOMER:	Refer to G:Cloud Order Form	
CUSTOMER CONTACT:	NAME:	Refer to G:Cloud Order Form
	TITLE:	Refer to G:Cloud Order Form
	ADDRESS:	Refer to G:Cloud Order Form
	OFFICE PHONE:	Refer to G:Cloud Order Form
	MOBILE PHONE:	Refer to G:Cloud Order Form
	EMAIL:	Refer to G:Cloud Order Form
BILLING INFORMATION (ONLY IF DIFFERENT FROM CUSTOMER CONTACT INFORMATION):	NAME:	Refer to G:Cloud Order Form
	TITLE:	Refer to G:Cloud Order Form
	ADDRESS:	Refer to G:Cloud Order Form
	OFFICE PHONE:	Refer to G:Cloud Order Form
	MOBILE PHONE:	Refer to G:Cloud Order Form
	EMAIL:	Refer to G:Cloud Order Form
LISTED AFFILIATES:	N/A	

PRODUCT	PRODUCT SUPPORT SERVICES	
Retain Cloud	SUPPORT SERVICES:	The Standard Product Support Services offered by Retain are set out in the Service Charter
	SUPPORT PERIOD:	Support Services as set out in this Product Order are provided during the Usage Period.

RETAIN INFORMATION
Retain International Software Limited trading as Retain International, a company incorporated in England and Wales (company number 13587193) with its registered office at 11 Buckingham Street, London, England, WC2N 6DF ("Retain"). Retain is part of AdvT Group.

PART B: PRODUCT AND FEES INFORMATION

PRODUCT	TERRITORY	USAGE PERIOD	LICENSE FEES (PER AUTHORISED USER PER ANNUM)
Retain Cloud	UK	Refer to G:Cloud Order Form. The Usage Period shall not automatically renew.	Refer to G:Cloud Order Form *

* Pricing is provided at our current rate and is subject to annual increase to allow for any third party and RPI indexation increases (Section 8.7 of the Master Terms (English Law) applies).

Support Fees.

The Licence Fees include all Support Fees for the Product Support Services specified in these Supplier Terms.

PART C: PRODUCT SUPPORT SERVICES

SUPPORT SERVICES	
NEW VERSIONS:	New Versions are not included as part of the Support Services. For the avoidance of doubt the Licence Fees include support fees that maintain the Customer on the latest supportable version of the standard retain cloud software offered to all customers at no additional charge.
INITIAL SUPPORT PERIOD:	Usage Period as stated in Part B table above.
RENEWAL SUPPORT PERIOD:	N/A

PART D: PROFESSIONAL SERVICES

All Professional Service provided under these Supplier Terms are subject to the Professional Services Terms which can be found at the following URL: <https://www.retaininternational.com/Terms-and-Conditions>

The Professional Services to be provided by Retain and the associated Professional Services Fees are quoted on a time and materials basis. Refer to the G:Cloud Order Form.

Retain's standard daily fee rates for an individual are calculated based on a 7.5 hour day worked between the hours of 09:00 and 17:30 (BST/GMT) Monday to Friday excluding UK bank holidays. No weekend or out of hours working is quoted.

The day rates exclude travel and subsistence, and work is assumed to be conducted remotely.

Retain shall be entitled to charge the Customer for (i) any expenses in accordance with the Professional Services Terms; (ii) the costs of services provided by third parties and required by Retain for the performance of the Professional Services; and (iii) for the cost of any materials in addition to the Fees quoted. These shall be pre-agreed with the Customer prior to expenditure.

Deliverables/Specification/Timetable: A description of the Deliverables and any specifications relating to the Professional Services to be provided by Retain is set out below:

Refer to G:Cloud Order Form

Charging for consultancy services is on a time and materials basis. The estimated fees are outlined above and charging for the project will be based on actual effort expended up to the authorized budget. Retain do not guarantee that the outputs will be achieved for the estimated budget stated. The parties will track monthly expenditure against outstanding activities and if the estimated budget requires increasing the parties will agree any increases as a contract change signed by both parties.

Acceptance: The Acceptance Period and Acceptance Criteria for the Deliverables are:

ACCEPTANCE PERIOD	Professional Services: Monthly in arrears for effort expended, as set out in the Professional Services Terms (English Law) within the URL link above. Products: Refer to Section 3 of the SOW at Annex B for Retain Cloud. In relation to a documentary Deliverable, a period of five (5) days following submission of the documentary Deliverables for acceptance and in relation to other Deliverables, a period of ten (10) days following submission of the Deliverable for acceptance in accordance with the Professional Services Terms (English Law).
ACCEPTANCE CRITERIA	Professional Services: Acceptance will be deemed monthly upon the provision of effort provided by Retain working in accordance with Customers instructions. Deliverables: Acceptance will be deemed upon the earlier of the following; a) The Deliverables acceptance criteria being achieved as set out in Section 3 of Annex 2 to these Supplier Terms; or

	b) the total authorized time and materials budget being expended for Professional Services, as set out in these Supplier Terms. All Deliverables are subject to one review cycle addressing comments/issues raised that are mutually agreed (in accordance with Clause 4 of the Professional Services Terms (English Law)). Any additional review cycles are deemed outside the scope of these Supplier Terms.
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PART E: INVOICING AND PAYMENT TERMS

INVOICING AND PAYMENT TERMS	
LICENCE FEES:	Invoiced annually in advance on the Agreement Effective Date and annually in advance thereafter.
SUPPORT FEES:	Support Fees are included in the Licence Fees
PROFESSIONAL SERVICES FEES:	Invoiced monthly in arrears against actual effort expended
HOSTING FEES:	Included in the Licence Fees. Retain reserves the right to review the hosting fees at any time, giving the Customer at least 60 days prior written notice of any changes. Hosting Fees will be reviewed and adjusted at least annually.
FORM OF PAYMENT:	Electronic (wire) transfer of immediately available funds to: Refer to G-Cloud Order Form
TAXES:	The stated fees do not include applicable VAT or any relevant taxes, duties, withholding or other governmental fees which are chargeable in addition.

PART F: CUSTOMER SPECIFIC REQUIREMENTS

Refer to G:Cloud Order Form

PART G: SUPPLIER TERMS

1. **GRANT OF USAGE RIGHTS**
 - 1.1 Subject to Customer's and Listed Affiliates' and their respective Authorised Users' continuing compliance with the terms and conditions of the Agreement, Retain grants to Customer during the applicable Usage Period, the Usage Rights for the Products set out in these Supplier Terms, as detailed in the applicable Product Terms for those Products. Unless explicitly stated otherwise in the Agreement, such Usage Rights shall be on a non-exclusive and non-transferrable basis.
 - 1.2 The Products and any Content,
2. **CHANGES**
 - 2.1 Customer acknowledges that Retain reserves the right, in its sole discretion, to make any changes to the Products that it deems necessary or useful to:
 - 2.1.1 maintain or enhance:
 - (a) the quality or delivery of the Products;

(b) the competitive strength of or market for Retain's services; or

(c) the cost efficiency or performance of the Products; or

2.1.2 comply with applicable law.

2.2 Retain may make commercially reasonable changes to one or more of the URL Terms from time to time. If Retain makes a material change to any of the URL Terms, Retain will notify Customer using the contact details set out in these Supplier Terms. If Customer does not agree to the change, Customer must notify Retain in writing within thirty (30) days of notice of the change. If Customer fails to notify Retain in accordance with this Paragraph 2.2 that it rejects the change, then the amended URL Terms shall automatically apply and shall, along with these Supplier Terms, govern the Agreement between Retain and Customer. If, in accordance with this Paragraph 2.2, Customer notifies Retain that it does not agree to the change, then the applicable URL Terms in effect immediately prior to the change shall continue to govern the Supplier Terms until the end of the then current Usage Period. If the Usage Period is then renewed (either automatically or by request of Customer) the updated URL Terms shall automatically apply to the Supplier Terms for such renewed (and any subsequent) Usage Period, until further updated in accordance with this Paragraph 2.2.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Customer acknowledges and agrees that the Products, Services, Content, Documentation and Retain's name, logos and branding have been developed at substantial cost and expense by Retain and its licensors and that they constitute valuable commercial and proprietary property of Retain and its licensors. Customer further acknowledges and agrees that all Intellectual Property Rights in and to the Products, Services, Content, Documentation and Retain's name, logos and branding are (and will be) owned solely and exclusively by Retain and its licensors. Except as expressly stated herein, the Agreement does not grant Customer any

rights to, under or in, any patents, copyright, database rights, trade secrets, trade names, trade mark (whether registered or unregistered), or any other rights or licences in respect of any part of the Products, Services, Content, Documentation or to Retain's Intellectual Property Rights.

3.2 Customer grants to Retain and its Affiliates:

3.2.1 a worldwide, perpetual, irrevocable, sub-licensable and royalty-free licence to use and incorporate into its services and products any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Authorised Users relating to the operation or use of Retain's services and products; and

3.2.2 a worldwide, irrevocable, sub-licensable and royalty-free licence for such period as is required by Retain to:

(a) host and display Customer Data on the Product(s) in order for Retain to comply with its obligation under the Agreement; and

(b) comply with any statutory or regulatory requirements.

3.3 If, for any reason and at any time during the term of the Agreement Customer acquires (whether by operation of law, contract, assignment or otherwise) any Intellectual Property Rights in the Products, Content, Deliverables or Documentation or in any changes, developments, improvements or configurations made to any such Products, Content, Deliverables or Documentation whether made by Retain, Customer, Reseller or a third party, Customer hereby unconditionally and irrevocably assigns (by way of a present and, where appropriate, future assignment), with full title guarantee, its entire rights, title and interest in and to all such Intellectual Property Rights to Retain and shall undertake all activities required by Retain in order to formalise and perfect such assignment.

4. INDEMNITIES

4.1 Subject to Paragraph 4.4 below, Retain will defend and indemnify, at its own expense, Customer and its Listed Affiliates from and against any third party (other than a Listed Affiliate or Authorised User) claim against Customer or its Listed Affiliates to the extent based on an allegation that any Product infringes any Intellectual Property Rights of that third party in effect at the Agreement Effective Date. Retain agrees to pay such damages or costs as are finally awarded against Customer or its Listed Affiliates by a court of competent jurisdiction or agreed to by Retain in settlement of such a claim provided that Customer:

4.1.1 gives Retain written notice of any such claim or threatened claim promptly after becoming aware of the claim or threat;

4.1.2 makes no admissions or settlements and does not prejudice Retain's defence of such claim or threatened claim;

4.1.3 gives Retain sole control of the defence, negotiations and settlement of such claim; and

4.1.4 fully cooperates in any defence or settlement of the claim (at Retain's cost). Retain shall not be liable for the settlement of a claim made without Retain's prior written consent.

The defence and indemnification obligations set out in this Paragraph 4.1 shall not apply to the extent a claim arises from, or in relation to, Content.

4.2 If Customer's use of a Product results in, or in Retain's opinion is likely to become subject to, any claim of infringement or misappropriation, then Retain may, at its sole option and expense, either:

4.2.1 obtain for the Customer the right to continue using the Product;

4.2.2 replace or modify the Product so that it is non-infringing and substantially

equivalent in function to the allegedly infringing Product; or

4.2.3 if the options set out in Paragraphs 4.2.1 and 4.2.2 above cannot be accomplished on commercially reasonable terms, then Retain may terminate Customer's rights to use the affected Product. If the option set out in this Paragraph 4.2.3 is invoked, then Retain will refund any unused prepaid Licence Fees for the affected Product.

4.3 The rights and remedies granted to Customer under this Paragraph 4 shall be Customer's sole and exclusive remedies and Retain's complete and entire responsibility and liability for any alleged infringement or misappropriation by any Product of any Intellectual Property Right or other proprietary right.

4.4 Retain shall have no obligation under Paragraph 4.1 above with respect to any claim of infringement or misappropriation by any Product of any Intellectual Property Right or other proprietary right based upon any of the following, and Customer shall defend, indemnify, and hold Retain and its Affiliates harmless from and against such claim:

4.4.1 combination of any Product with products, programs or data not furnished by Retain where, but for the combination, the claim would have been avoided;

4.4.2 any modification of a Product not made by Retain, if such claim would have been avoided by use of the unmodified Product;

4.4.3 negligence, abuse, misapplication, or misuse of a Product by or on behalf of Customer, any Listed Affiliate (or either of their Authorised Users), or a third party;

4.4.4 use of a Product by or on behalf of the Customer, any Listed Affiliate (or either of their Authorised Users) that is outside the purpose, scope, or

manner of use authorised by the Agreement or in any manner contrary to Retain's instructions; or

- 4.4.5 compliance by Retain with Customer's requirements or specifications if and to the extent such compliance with Customer's requirements or specifications resulted in the infringement.
- 4.5 Except for claims in respect of which Retain is obligated to indemnify Customer and its Listed Affiliates under Paragraph 4.1 above, Customer will defend and indemnify, at its own expense, Retain and its Affiliates from and against any third party claim against Retain or its Affiliates to the extent arising out of or in connection with:
 - 4.5.1 any claim that any Customer Data infringes or misappropriates such third party's intellectual property rights including Intellectual Property Rights, privacy, publicity, or other personal or proprietary rights, or that any Customer Data posted, displayed, distributed, broadcast, or otherwise published contains libellous, defamatory or otherwise injurious or unlawful material;
 - 4.5.2 Customer's use of, or inability to use, any Product; or
 - 4.5.3 Customer's failure to comply with the terms of the Agreement,

and Customer agrees to pay such damages or costs as are finally awarded against Retain by a court of competent jurisdiction or agreed to by Customer in settlement of such a claim, provided that Retain gives Customer:

- (a) written notice of any such claim or threatened claim promptly after becoming aware of the claim or threat;
- (b) sole control of the defence, negotiations and settlement of such claim; and

- (c) full cooperation in any defence or settlement of the claim (at Customer's cost). Customer shall not be liable for the settlement of any such claim made without Customer's prior written consent.

5. LIABILITIES

- 5.1 Customer has, and will retain, sole responsibility for:
 - 5.1.1 all Customer Data, including its content, use, accuracy, quality and legality;
 - 5.1.2 all information, instructions, and materials provided by or on behalf of Customer, its Listed Affiliates or any Authorised User in connection with the Products;
 - 5.1.3 Customer Systems;
 - 5.1.4 the security and use of Customer's and its Authorised Users' Access Credentials; and
 - 5.1.5 all access to and use of the Products directly or indirectly by or through the Customer Systems or its or its Authorised Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.
- 5.2 In the event of loss or damage to Customer Data or Content, Customer's sole and exclusive remedy, and Retain's sole and exclusive liability, shall be for Retain to use its reasonable commercial efforts to restore the lost or damaged Customer Data or Content from the latest backup of such Customer Data or Content.
- 5.3 Retain shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data or Content caused by Customer or any third party given access by the Customer or for any failure of Customer to comply with Paragraph 5.1 above.

- 5.4 Except as expressly and specifically provided in the Agreement, Retain shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Retain by Customer in connection with the Product(s), or any actions taken by Retain at Customer's direction.
- 5.5 Nothing in the Agreement shall limit or exclude the liability of:
- 5.5.1 either Party for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any breach of Section 9 (Confidentiality) of the Master Terms (save as set out in Paragraph 5.8 below);
 - (e) liability under any indemnity set out in Paragraph 4 (*Indemnities*) above; or
 - (f) any other liability which may not be excluded by law; or
- 5.5.2 Customer for:
- (a) Customer's obligation to pay any amounts due under the Agreement;
 - (b) any breach of:
 - (i) Section 2 (*Usage Rights*) of the Master Terms;
 - (ii) Section 5 (*Export*) of the Master Terms;
 - (iii) Section 6 (*Restrictions and Customer Obligations*) of the Master Terms;
- (iv) Section 12 (*Legal Compliance*) of the Master Terms;
 - (v) Paragraph 3 (*Intellectual Property Rights*) above; or
 - (vi) Retain's Intellectual Property Rights; or
 - (c) any indemnity provided by Customer under the Agreement.
- 5.6 Subject to Paragraph 5.5 above:
- 5.6.1 neither Party shall be liable to the other whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise for:
- (a) any loss of profits, loss of anticipated savings, loss of business or opportunity, loss of contracts, depletion of goodwill and/or similar losses, loss or corruption of data or information, in each case whether direct or indirect; or
 - (b) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
- 5.6.2 each Party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with the Agreement, or its subject matter, shall be limited to an amount equal in the aggregate to the greater of:
- (a) the total amount paid or payable by Customer under the Agreement for the Product or Services giving rise to the liability in the twelve (12) months immediately preceding the date of the first incident out of which the liability arose; and

(b) five thousand pounds (£5,000).

- 5.7 All dates supplied by Retain for the delivery of any Product or the provision of any Services shall be treated as approximate only. Retain shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 5.8 Notwithstanding Paragraph 5.5.1(d) above, Retain's liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with any breach of Section 9 (Confidentiality) of the Master Terms in respect of Customer Data, shall be subject to the limitations and exclusions of liability set out in Paragraph 5.6 above.
- 5.9 Without prejudice to any other right or remedy available to Retain under the Agreement or at law, Retain's non-performance of, or delay in performing any of, its obligations under the Agreement will be excused to the extent such non-performance or delay results from any act or omission of Customer, its agents, subcontractors, consultants or employees. If Retain incurs any additional costs in performing any of its obligations under the Agreement following any such act or omission of Customer, Retain may charge Customer additional fees as is reasonably necessary to recover any such costs. Unless otherwise agreed by Retain, any agreed payment profile for the fees applicable to any such non-performed or delayed obligations shall not be affected by any such non-performance or delay and Customer

shall remain liable to pay the applicable fees in accordance with the agreed payment profile notwithstanding any such non-performance or delays.

- 5.10 References in this Paragraph 5 to Retain and Customer (including where referred to as a 'Party') shall be deemed to be references to Retain together (and in the aggregate) with its Affiliates and Customer together (and in the aggregate) with its Affiliates, respectively.
- 5.11 Where Customer has incurred any liability to Retain, whether under the Agreement or otherwise and whether such liability is liquidated or unliquidated, Retain may set off the amount of such liability against any sum that would otherwise be due to Customer under the Agreement.
- 5.12 The provisions of this Paragraph 5 shall survive the expiration or termination of the Agreement and shall apply to the maximum extent permissible under applicable law, even if a remedy provided herein should fail of its essential purpose.

6. GENERAL

- 6.1 These Supplier Terms may be executed in separate counterparts, including by electronic or digital signature, and by the different Parties on the same or separate counterparts. Any signed copy of these Supplier Terms made by reliable means will be considered an original, and all signed counterparts will constitute one and the same instrument.

SUPPLIER TERMS SUBMISSION AND ACCEPTANCE

A G-Cloud Order Form will be required to be executed between the parties which, once executed by the parties, incorporates this Agreement.

Annex 1

Third Party Terms and Conditions

1. Customer shall comply with the following third-party terms and conditions in accordance with Section 2.3 of the Master Terms:
 - Retain is using Microsoft Azure hosting services. By accepting these Supplier Terms the Customer accepts the standard Microsoft Azure offering, including compliance with Microsoft's standard terms and conditions, guidelines, policies and procedures, which can be found on the Microsoft website, for receipt of the services.

Annex 2

Statement of Work (SOW)

To be agreed in a G-Cloud Order Form