

PRODUCT TERMS - SAAS (ENGLISH LAW) | ResponseEye

These Product Terms apply whenever Customer accesses or uses Capita’s ResponseEye 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 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 permissions have been purchased as detailed in the Product Order.

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

“Customer Data” has the meaning set forth in the Master Terms, and includes Session Activity Data and Session Data.

“Default Tier 5 Payment” has the meaning given to it in Paragraph 2.4.4 below.

“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>

“Pricing Tier” means the pricing band applicable to Customer specified in the Product Order, subject to adjustment in accordance with Paragraph 2.4.

“Session Activity Data” means the meta data relating to a particular call session utilising the Product(s), including session ID, date and time of session.

“Session Data” means the following information as may be submitted to, or captured by, the Product(s) by members of the public or Customer’s Authorised Users via end user devices during a ‘session’ held between a call handler and a caller: (a) the

telephone number of a caller or the caller’s email address; (b) any reference number for the “session” provided by the call handler; (c) GPS location of the caller during the call; (d) the caller’s phone model, vendor, operating system and browser and browser model; (e) any audio, picture or video content; and (f) the call handler’s user ID. Session Data excludes Session Activity Data.

“Support Hours” means 08:00 to 18:00 (GMT) Monday to Friday, excluding bank or national holidays in the United Kingdom.

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

“Tier 5 Increment” has the meaning given to it in Paragraph 2.4.4 below.

“Transaction” means each session during which Customer sends a URL link to a recipient who then sends video, images and other data to Customer via the Product(s). There is no limit to the amount of data that may be sent during a session and the session will end once the recipient stops sending any such data to Customer via the Product(s).

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 Grant of Usage Rights. Subject to and conditioned on Customer’s payment of the Licence Fees and Customer’s and its Authorised Users’ continuing compliance with all other terms 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:
- 2.1.1 right for Customer and its Listed Affiliates to access and use, solely by and through the Authorised Users, the Product(s) listed in the Product Order (including any changes made pursuant to the Agreement) and the relevant Documentation; and
 - 2.1.2 licence for Customer and its Listed Affiliates to, solely by and through the Authorised Users, access, view and use the Content, solely for the Authorised Purpose within the Territory.
- 2.2 Authorised Purpose. The “**Authorised Purpose**” is the use of the Product(s) for Customer’s and its Listed Affiliate’s internal purposes for enabling situational awareness and resource deployment. For clarity, Customer and its Authorised Users shall not be entitled to: (a) use or otherwise access the Product(s) outside of the Territory; or (b) use the Product(s) (whether directly or indirectly and whether through Customer’s personnel or a member of the public) to capture picture, audio, video or any other Customer Data originating outside of the Territory.
- 2.3 Restrictions. In addition to those restrictions set forth in Section 6 of the Master Terms, Customer shall not, and shall cause Authorised Users not to, act outside the scope of the license and access rights that are expressly granted by Capita under the Agreement. Further, Customer shall not, and shall not permit or allow Authorised Users or any other person, to use the Product(s):
- 2.3.1 for the purposes of conducting or providing surveillance, analyses or research that isolates a group of individuals or any single individual for any unlawful or discriminatory purpose or in a manner that would be inconsistent with the users’ reasonable expectation of privacy; or
 - 2.3.2 to target, segment or profile individuals based on health (including pregnancy), negative financial status or condition, political affiliations or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, or any other sensitive categories of personal information prohibited by law.
- 2.4 Usage caps and Pricing Tier changes.
- 2.4.1 The total number of Transactions per month will not exceed the maximum number for the applicable Pricing Tier set out in the Product Order. Capita will monitor Customer’s use of the Product(s) to determine whether the number of Transactions is within the then-current Pricing Tier.
 - 2.4.2 If the number of Transactions exceeds the maximum number for the applicable Pricing Tier for two (2) consecutive months or four (4) times in any twelve (12) month period, Customer shall automatically be placed in the higher Pricing Tier that corresponds to the number of Transactions actually occurring. Subject to Paragraphs 2.4.3 and 2.4.4 below, where Customer is moved to a higher Pricing Tier, Customer shall be liable for the applicable annual Licence Fees for that Pricing Tier on a pro-rated basis until the next anniversary of the Agreement Effective Date at which point Customer shall pay the next year’s annual Licence Fees based on that higher Pricing Tier. Capita shall be entitled to raise an invoice for any such pro-rated amount at the time that Customer is moved to the higher Pricing Tier.

- 2.4.3 If, in accordance with Paragraph 2.4.2 above, Customer is moved to Pricing Tier 5, the Parties will agree the annual Licence Fee for Pricing Tier 5 that will be payable by Customer in accordance with the mechanism set out in Paragraph 2.4.2 above.
- 2.4.4 If the Parties are unable to agree an annual Licence Fee for Pricing Tier 5, then for each increment (or part thereof) of 300 Transactions above the maximum monthly number of Transactions specified for Pricing Tier 4 (each a “**Tier 5 Increment**”) Customer shall be liable to pay an amount equal to the annual Licence Fee for Pricing Tier 1 (such amounts in the aggregate being the “**Default Tier 5 Payment**”) on a pro-rated basis until the next anniversary of the Agreement Effective Date at which point Customer shall pay the next year’s annual Licence Fees based on the Default Tier 5 Payment. Capita shall raise an invoice for any such pro-rated amount at the time that the Default Tier 5 Payment is calculated by Customer. A worked example of the calculation of Default Tier 5 Payments is set out at Annex 4 of these Product Terms.
3. **SERVICE LEVELS AND SCHEDULED DOWNTIME.**
- 3.1 Service levels. Subject to the terms and conditions of this Agreement, Capita will use reasonable efforts to meet or exceed the service levels set out in Annex 1 of these Product Terms, subject to the exceptions set out therein.
- 3.2 Scheduled downtime. Customer acknowledges and agrees that the Product(s) shall be unavailable from time to time during periods of scheduled downtime. Capita will use reasonable endeavors to notify Customer reasonably in advance of such scheduled downtime but Customer acknowledges that Capita provides no service level commitment or warranty in relation to availability or uptime of the Product(s).
4. **HOSTING AND DELETION OF SESSION DATA.**
- 4.1 Hosting. Subject to Paragraph 3 of these Product Terms and Customer’s compliance with its obligations under this Agreement, during the Usage Period Capita will, or will procure a Hosting Provider to, host the Product(s) (including any Customer Data) on the Capita IT Systems.
- 4.2 Deletion of Session Data. Customer acknowledges that all Session Data will be permanently and irretrievably deleted from the Product(s) thirty (30) days from the date of capture or upload to the Product(s).
5. **SUPPORT SERVICES AND PROFESSIONAL SERVICES.**
- 5.1 Support Services. Subject to payment by Customer of all charges payable under the Agreement and Customer’s compliance with its obligations under the Agreement, Capita will provide to Customer the Support Services specified in Annex 3 of these Product Terms.
- 5.2 Support requests. In order to obtain Support Services, Customer must:
- 5.2.1 contact Capita by telephone (+44-330-058-5946 or +44-330-058-5940) or by email (csis.servicedesk@capita.co.uk) (or such other contact details as notified to Customer from time to time); and
- 5.2.2 provide Capita with sufficient information to enable Capita to reproduce the problem.
- 5.3 Additional Support Fees. If Customer uses Capita’s service desk for general advice regarding the use of the Product(s), Capita reserves the right to treat this as outside the scope of the Support Services, and to charge Customer additional fees. 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.

5.4 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.

6. **CUSTOMER OBLIGATIONS.**

6.1 Support Contact. Customer shall appoint one individual within Customer’s organisation who shall have the authority to act on behalf of Customer in matters pertaining to the Customer’s support requests and to serve as the primary contact between Customer and Capita with respect to Customer’s receipt of Capita technical support. Customer shall initiate all support inquiries and requests through this individual and ensure that he or she has the requisite organisational authority, skill, experience and other qualifications to perform in such capacity. Customer shall maintain the same support contact throughout the applicable Usage Periods and such additional period, if any, as Capita performs technical support services to the Customer hereunder, except for any change of such contact due to:

- 6.1.1 Capita’s request; or
- 6.1.2 the death, disability, resignation or termination of such contact or other circumstances outside Customer’s reasonable control. Upon Capita’s reasonable written request, Customer shall promptly replace Customer’s support contact.

7. **TERMINATION.**

7.1 The Parties’ termination rights are set out in Section 11 of the Master Terms.

8. **DATA PROTECTION.**

8.1 Scope and status of the Parties.

8.1.1 In this Paragraph 8, 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.

8.1.2 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 the Product(s) (including in relation to any Support Services and Professional Services to be performed by Capita in relation to the Product(s) under such Product Order) (the “Customer Personal Data”). Customer may act as controller or processor in respect to Customer Personal Data. This Paragraph 8 sets out Capita’s data processing obligations to Customer in respect of Customer Personal Data. Details of the applicable processing activities (including categories of personal data and data subjects) are described in Annex 2 of these Product Terms.

8.1.3 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 Support 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 Support Services.

Paragraph 8.2.4, Customer hereby consents to Capita retaining those entities listed at paragraph 1 (approved sub-processors) of Annex 2 of 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 8.2.4:

- (a) ensure that equivalent requirements to those set out in this Paragraph 8.2 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;

8.2 Capita's obligations. Where Capita processes Customer Personal Data under or in connection with the performance of its obligations under the Product Order, Capita shall:

- 8.2.1 process the Customer Personal Data only in accordance with the Agreement and with other mutually agreed and documented instructions of Customer (including in relation to any international transfer of Customer Personal Data made in accordance with Paragraph 8.3);
- 8.2.2 implement appropriate technical and organisational measures necessary to meet the requirements of Article 32 of the GDPR;
- 8.2.3 ensure Capita staff authorised to process Customer Personal Data are subject to appropriate confidentiality obligations;
- 8.2.4 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

8.2.5 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;

8.2.6 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;

8.2.7 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 8. 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

8.2.8 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 Paragraphs 8.2.5 to 8.2.8 (inclusive).

8.3 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 8.3 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.

8.4 Indemnity.

8.4.1 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 Customer or any Customer Affiliate.

8.4.2 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 8.1.3(b) or Paragraph 8.1.3(c).

ANNEX 1

SERVICE LEVELS

The following tables highlights the Service Levels applicable to the Support Services.

1. Capita Service Levels.

Category	Major Fault	Minor Fault	Cosmetic Fault
Response Time from Capita service desk 24/7	Within fifteen (15) minutes	Within fifteen (15) minutes	Within 30 minutes
Restoration Time (during Support Hours)	Eight (8) hours	Fifty (50) support hours	Reasonable endeavours / next release

2. Incident Severity. Incidents severities are categorised as follows:

Severity	Definition
1 (Major Fault)	<p>“Major Fault” means a fault which is neither a Minor or Cosmetic Fault which prevents the System from operating in accordance with its specification and results in limited use.</p> <p>Below are some examples of faults of this severity:</p> <ul style="list-style-type: none"> • faults that cause loss of all of the functionality of a critical feature or subsystem; • faults that prevent the primary functionality of the system; • faults that cause irreparable loss or damage to data; or • faults that allow a breach of the system security.
2 (Minor Fault)	<p>“Minor Fault” means a fault which is neither a Major Fault, nor a Cosmetic Fault including, without limitation, a Fault which prevents the system from operating in accordance with its specification, but which does not prevent the Customer using the system.</p> <p>Below are some examples of faults of this severity:</p> <ul style="list-style-type: none"> • faults that do not affect the operation of the system but are visible to the user; or • faults that result in minor functionality being unavailable or unreliable.
3 (Cosmetic Fault)	<p>“Cosmetic Fault” means a fault which prevents the system operating in accordance with its technical specification, but there is no impact on functionality, performance or service.</p> <p>Below are some examples of faults of this severity:</p> <ul style="list-style-type: none"> • User interface or documentation errors; • faults that have no impact on how the customer perceives the system operating; or • faults resulting in minor functionality not operating or being unreliable but not noticeable by the customer.

3. Capita Service Levels Exclusions.
- 3.1 Delays due to the following circumstances will be excluded from the Restoration Time and the Response Time from Capita Service Desk:
 - 3.1.1 the redaction of sensitive information from log files prior to sending to Capita support;
 - 3.1.2 periods after fault resolution while an Authorised User confirms resolution;
 - 3.1.3 SMS carrier failure;
 - 3.1.4 availability of Customer resource in relation to network and infrastructure;
 - 3.1.5 delays in Authorised Users or Administrator Users providing additional information to allow fault investigation;
 - 3.1.6 incident returned due to lack of information upon escalation; and
 - 3.1.7 issues affecting Microsoft Azure or other Hosting Providers.

ANNEX 2
PERSONAL DATA AND PROCESSING ACTIVITY

1. **Approved sub-processors**
- 1.1 Microsoft Azure.
- 1.2 All Capita Affiliates from time to time.

1. **Processing Activities**

Subject matter of the processing	The subject matter of the processing under the Agreement is personal data collected by, or submitted to, the Product(s) by Customer or its Authorised Users in accordance with the Agreement.
Duration of the processing	The duration of the processing under the Agreement is determined in accordance with the Agreement, provided that: <ul style="list-style-type: none"> • Session Data shall be retained for thirty (30) days from the date of the relevant call; and • personal data relating to a Customer call handler that is input to the Product(s) by the Customer, is retained until the Customer terminates its subscription to the Product(s).
Nature and purpose of the processing	The purpose of the processing under the Agreement is Capita's performance of its obligations under the Agreement, including without limitation: <ul style="list-style-type: none"> • hosting of the Product(s) by Capita or its sub-processors; and • performance by Capita or its sub-processors of the Capita Support Services as defined under the Agreement.
Type of personal data processed	Personal data that is submitted to, or captured by, the Product(s) by or on behalf of the Customer or its Authorised Users, including without limitation Session Data and Session Activity Data (in each case to the extent that it constitutes personal data).
Categories of data subjects	Data subjects may include: <ul style="list-style-type: none"> • Customer's employees, consultants, contractors and agents; and • members of the public using the Product(s) as a public caller to a Customer and other members of the public who may be identifiable through captured Session Data.
Obligations and rights of Customer	The obligations and rights of Customer are set out in the Agreement.

ANNEX 3

SUPPORT SERVICES

1. **Support Services**
- 1.1 Capita shall provide the following Support Services in respect of the Product(s):
 - 1.1.1 technical support and maintenance for the Product(s) via a 24x7 service desk, including resolution of service incidents, investigation into problems using the diagnostic evidence and systems logs and change management;
 - 1.1.2 Customer onboarding;
 - 1.1.3 configuration of the Product(s) to suite Customer's requirements (within the scope of Product's off-the-shelf configuration capabilities) – On request, timings to be agreed; and
 - 1.1.4 assessment of Customer's network to ensure compatibility with the Product(s). Customer shall be responsible for any network alterations required to ensure achieve compatibility– On request, timings to be agreed.

ANNEX 4

PRICING TIER 5 WORKED EXAMPLE

Assumptions:

Annual Licence Fee for Pricing Tier 1 = £12,000

Annual Licence Fee for Pricing Tier 4 = £30,000

Maximum number of Transactions per month for Pricing Tier 4 = 6000

Worked Examples:

Actual Transactions in the applicable month	Default Tier 5 Payment
6001 – 6300	£42,000
6301 – 6600	£54,000
6601 - 6900	£66,000