

Software Licence Terms

The following terms (hereinafter referred to as the “**Terms**”) are effective

BETWEEN

- (1) **BTCSoftware Limited** incorporated and registered in England and Wales whose registered office is Lyndale House, 24A High Street, Addlestone, KT15 1TN (“**BTC**”); and
- (2) you (the “**Licensee**”).

RECITALS

- (A) BTC owns the Solutions suite of software products and makes them available to subscribers via download from its website.
- (B) The Licensee wishes to use BTC's Software in its business operations.
- (C) These Terms govern the use by the Licensee of BTC's Software as currently existing and subsequently enhanced or modified.

1. DEFINITIONS

1.1. In this Agreement the following terms shall have the following meanings:

“ Effective Date ”	is the date that these Terms are accepted by Licensee.
“ Fees ”	are the fees payable by the Licensee to BTC for the Software.
“ Licensee ”	is the company, firm, individual or other entity registered and licensed to use the Software.
“ BTC’s Websites ”	means the web pages at the URL’s provided by BTC
“ Software ”	All or one of the following: SA Solution, PM Solution, AP Solution and the CT Solutions products and/or any additional software products later created or owned by BTC.
“ Term ”	means the term set out in clause 10.1.
“ Users ”	are those employees, agents and independent contractors of the Licensee who are authorised to use the Software.
“ Virus ”	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

2. LIMITED LICENCE

Subject to the terms and conditions herein, BTC grants to Licensee a non-exclusive, non-transferable right to permit the Licensee to use the Software during the Term solely for the Licensee's internal business operations. Each person who accesses the Software must have an individual User name. User names cannot be shared.

3. DELIVERY OF SOFTWARE

3.1. BTC shall deliver the Software by enabling the Licensee to download the Software from its website on payment of the relevant Fees.

3.2. BTC will, at no additional cost to the Licensee, provide the Licensee with BTC's standard support service as set out in clause 6. BTC may amend the support service policy in its sole and absolute discretion from time to time.

3.3. The Licensee undertakes to:

3.3.1. co-operate with BTC and provide all information necessary under these Terms;

3.3.2. ensure that all authorised users of the services comply with these Terms;

3.3.3. ensure that its IT network and systems comply with any requirements specified by BTC in any Help file, technical specifications or on BTC's Websites and to be solely responsible for maintaining its network connections and telecoms links with the Software;

3.3.4. ensure that the number of Users using the Software does not exceed the number of licences it has purchased from time to time;

3.3.5. notify BTC as soon as it becomes aware of any unauthorised use of the Software by any person;

3.3.6. ensure that any password or code provided by BTC is kept secret and confidential and not passed to any third party.

3.4. The Licensee shall not:

3.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:

3.4.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

3.4.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2. access all or any part of the Software or materials owned by BTC in order to build a product or service which competes with the Software; or

3.4.3. use the Software and/or BTC materials to provide Software to third parties; or

- 3.4.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or BTC materials available to any third party except the Users, or
- 3.4.5. attempt to obtain, or assist third parties in obtaining, access to the Software and/or BTC materials, other than as provided under this clause 3; and
- 3.5. The Licensee shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify BTC.
- 3.6. The rights provided under this clause 3 are granted to the Licensee only.

4. **CONFIDENTIALITY OF DATA**

4.1. Both parties acknowledge that:

4.1.1. all information disclosed or made available by one party to the other which is either:

4.1.1.1. marked by the disclosing party as "confidential"; or

4.1.1.2. which is by its nature confidential

shall be treated by the other party as confidential; and

4.1.2. information entered into the Software by Users of the Software will be considered to be confidential information

4.2. A party's Confidential Information shall not be deemed to include information that:

4.2.1. is or becomes publicly known other than through any act or omission of the receiving party;

4.2.2. was in the other party's lawful possession before the disclosure;

4.2.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

4.2.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or

4.2.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

4.3. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

4.4. This clause shall survive termination of these Terms, however arising.

5. **PERSONAL DATA**

In performing this Agreement, BTC shall comply with UK data protection law and the EU General Data Protection Regulation (GDPR).

6. TRAINING & SUPPORT

- 6.1. BTC agrees to provide telephone support to the Licensee and to provide a telephone help-line service during normal business hours of 9.00 am to 5.30 pm UK time (excluding public holidays) for assistance in operating the Software. BTC reserves the right to withdraw standard telephone support (or to charge for it) in the event that any Licensee makes excessive use of it and/or engages in frivolous requests for support.
- 6.2. BTC reserves the right to charge for technical support at its standard rates in the following circumstances:
 - 6.2.1. where the Licensee is using unsupported hardware or software;
 - 6.2.2. in any situation in which BTC has assisted the Licensee in migrating data from its existing provider and the Licensee later terminates this licence within 30 days.
 - 6.2.3. In the event that BTC provides support/assistance in data recovery/system configuration after any major outage affecting the Licensee's IT systems and the Licensee did not have a suitable back up system in place.
- 6.3. BTC are not obliged to provide telephone support in respect of any: (i) modification to the Software by any person other than BTC; and/or (ii) any use of the Software which is not in accordance with the terms of this Agreement and/or (iii) which arises out of the non-compliance of the Licensee's IT systems with the requirements set out in any Help file, technical specifications or on BTC's Websites.
- 6.4. For the avoidance of any doubt, BTC standard support does not include any travel or subsistence expenses incurred in providing any site support or any program customisation or data conversion – such services may be offered by BTC at its sole discretion and subject to a separate commercial agreement between the parties.
- 6.5. Any additional services to be provided by BTC to the Licensee including, but not limited to training, shall be the subject of separate commercial agreement between the parties.

7. WARRANTIES, LIABILITIES & REMEDIES

- 7.1. The Software shall substantially comply with any Help file setting out the main functionality of the Software. Apart from this, the Software is provided on an "as is" and "as available" basis and no warranty, express or implied, as to condition, quality, performance, satisfactory quality, merchantability or fitness for purpose of the Software is given and all such warranties are hereby excluded. Moreover, the Licensee has had an opportunity to evaluate the Software at no cost in a 15 day evaluation period.
- 7.2. BTC warrants that the Software provided to the Licensee by BTC under these Terms shall be provided with reasonable care and skill.
- 7.3. BTC does not warrant that the Software will be error-free.
- 7.4. Subject to clause 7.5:
 - 7.4.1. in no event shall BTC be liable for:
 - 7.4.1.1. any loss of profits, business, anticipated savings, goods, contract, use, depletion of goodwill or similar losses; or

- 7.4.1.2. any indirect, special, incidental or consequential loss or damage arising from the supply or use of the Software;
- 7.4.2. the Licensee's remedy for any damage or loss in any way connected with the Software provided by BTC, whether by BTC's breach of warranty or any breach of any other duty, shall be, in the first instance replacement of the Software; and
- 7.4.3. BTC's liability for direct losses arising out of or in connection with these Terms shall in no circumstances exceed:
 - 7.4.3.1. in relation to a single claim, 100% of the Fees payable in the first year of the Licence (calculated on the basis that the licence is taken for 12 months) ;
 - 7.4.3.2. in relation to total claims, 200% of the Fees payable in the first year of the Licence (calculated on the basis that the licence is taken for 12 months).
- 7.5. Nothing in these Terms excludes the liability of BTC:
 - 7.5.1. for death or personal injury caused by BTC's negligence; or
 - 7.5.2. for fraud or fraudulent misrepresentation.

8. IP OWNERSHIP

The Licensee acknowledges and agrees that BTC owns all intellectual property rights in the Software and related materials. Except as expressly stated herein, these Terms do not transfer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software and related materials, and all right title and interest thereto remains with BTC.

9. MODIFICATION OF SOFTWARE

BTC retains the right to modify the Software at any time.

10. TERM AND TERMINATION OF THE LICENCE

- 10.1. This Licence shall, unless otherwise terminated as provided in this clause 10, commence on the Effective Date and BTC will provide the Licensee with a licence for an initial period of 12 months ("**Initial Term**") and subsequently for 12 month periods for as long as the Software is offered and Licensee pays all sums due to BTC for the Software (each a "**Renewal Period**"); and the Initial Term together with any subsequent Renewal Periods shall constitute the **Term**.
- 10.2. Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:
 - 10.2.1 the other party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - 10.2.2 the other party commits a material breach of any other term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

- 10.2.3 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or is the subject of involuntary winding up, insolvency and/or bankruptcy procedure.
- 10.3. The Licensee shall also be entitled to terminate the Agreement without cause and receive a full refund of monies paid provided that (i) written notice of termination is received by BTC within 30 days of the Effective Date (or any renewal date) and (ii) in the event that the Licensee has made use of the Software prior to termination, BTC shall, acting reasonably and in good faith, be entitled to retain a reasonable amount of any monies received to reflect such use.
- 10.4. On termination of these Terms for any reason:
- 10.4.1. all licences granted under these Terms shall immediately terminate, save that for 30 days after the date of termination the Software reverts to evaluation (non-filing) mode and following this, at BTC's discretion, the licence may continue in this mode for a period of up to 12 months after the date of termination;
- 10.4.2. the Licensee shall return and/or make no further use of any BTC materials and other items (and all copies of them) belonging to BTC;
- 10.4.3. BTC may destroy or otherwise dispose of any of the Licensee Data in its possession unless BTC receives, no later than 28 days after the effective date of the termination of these Terms, a written request for the delivery to the Licensee of such Licensee Data. BTC shall use reasonable commercial endeavours to deliver the Licensee Data to the Licensee within 30 days of its receipt of such a written request, provided that the Licensee has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Licensee shall pay all reasonable expenses incurred by BTC in returning or disposing of Licensee Data; and
- 10.4.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination shall not be affected or prejudiced.

11. FEES AND PAYMENT

- 11.1. The Licensee shall pay the Fees, to BTC for the Software as follows:
- 11.1.1. Option A: one annual payment in advance to be made no later than the Effective Date; or
- 11.1.2. Option B: an initial payment equal to two monthly licence fee instalments to be made no later than the Effective Date, followed by 10 monthly licence fee payments, commencing in the third calendar month after the initial payment is due.
- 11.2. If the Licensee fails to make any payment due to BTC under these Terms, within 30 days of it being due, then without limiting BTC's remedies under these Terms, the Licensee shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Licensee shall pay the interest together with the overdue amount.
- 11.3. BTC shall be entitled to increase the Fees at the start of each Renewal Period upon 21 days' prior notice to the Licensee.

12. DISPUTES

Prior to any formal proceedings being commenced in accordance with Clause 18, all disputes between any of the parties arising out of these Terms shall be referred to a designated executive of Licensee and a designated executive of BTC for resolution.

13. ENTIRE TERMS

These Terms (together with the separate written confirmation of the Software being licensed and Fees payable) constitute the entire agreement between BTC and the Licensee in relation to the licensing of the Software and supersede all prior communications, agreements and proposals whether written or oral in relation to its subject matter.

14. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15. SEVERANCE

If any provision or part-provision of this Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

16. COUNTERPARTS

These Terms may be executed in counterpart, each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one agreement.

17. FORCE MAJEURE

Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure results from events, circumstances or causes beyond its reasonable control.

18. GOVERNING LAW

All matters arising out of or in connection with these Terms shall be governed by and construed in accordance with the laws of England and Wales and, subject to clause 12, the parties submit to the exclusive jurisdiction of the English courts.