Terms & Conditions

Business Micros has agreed to grant the Customer a non-exclusive license to access and use the Software and associated Documentation specified in the Order Form and to provide certain Services to the Customer in respect of delivery of technical support, maintenance and training as set out in the Order Form upon the terms and conditions set out below.

These terms and conditions, together with the relevant Order Form, will govern the Customer's use of the Software and / or receipt of the Services as set out in the relevant Order Form and will apply to the exclusion of all other terms and conditions, including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Order Form) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

No variation to these terms and conditions shall be effective unless signed in writing by a duly authorized representative of both Business Micros and the Customer.

Operative provisions:

1.   Definitions and Interpretation

1.1 In these terms and conditions unless the context otherwise requires:

"**Additional Charges**" means the charges at Business Micros' rates from time to time for work undertaken on a time and materials basis;

"**Additional Services**" means any additional services as Business Micros and Customer may agree to be provided from time to time in writing;

"**App**" means the mobile application developed by Business Micros and provided to the Customer comprising the Software;

"**Authorised Users**" means those employees and independent contractors of the Customer and / or an authorised third party who is authorised to use the Software pursuant to clause 3.6 of these terms and conditions;

"**Business Micros**" means B.M. Software Solutions Limited t/a Business Micros whose principal address is at The Cross, Main Street, Penpont, Thornhill, Dumfriesshire, DG3 4BP;

"**Cloud Site**" means the Website and / or the App made available to the Customer by Business Micros through which the Customer may access and use the Cloud Software;

"**Cloud Software**" means Software licensed to the Customer that is delivered and managed remotely by Business Micros as part of a hosted environment;

"**Confidential Information**" means any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with these terms and conditions and/or any Order Form by or on behalf of a party (the "**Discloser**") to the other party (the "**Recipient**") whether before, on or after the date of the relevant Order Form and that relates (in whole or in part): i) to the Discloser or its business; and/or ii) to the terms of or subject matter of these terms and conditions or any Order Form.

"**Customer**" means the company or other organisation identified in the relevant Order Form;

"**Customer Data**" means any information, data, documents or other content inputted or uploaded by the Customer into the Database and/or the Software;

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk** : **www.businessmicros.co.uk**

"**Database**" means the database of information made available to the Customer through the use of the Software and as amended by Business Micros from time to time;

"**Data Protection Laws**" any laws in force in the United Kingdom from time to time that relate to data protection, the processing of personal data and privacy;

"**Designated Equipment**" means the equipment of the Customer upon which the Software is to be Installed by Business Micros from time to time;

"**Documentation**" means the instruction manuals, user guides and other information identified in the Order Form to be made available from time to time by Business Micros at its discretion in either printed or electronic format for the Customer;

"**Event**" an act, event, omission or circumstance;

"**Fees**" means the fees to be paid by the Customer to Business Micros for the Software (including the Documentation), the Services and any Hardware as set out in the relevant Order Form and as the same may be varied by Business Micros from time to time;

"**Hardware**" means any hardware ordered by and sold or supplied to the Customer by Business Micros as identified in the relevant Order Form;

"**Intellectual Property Rights**" means all intellectual property rights, including patents, utility models, rights to inventions, copyright and neighboring and related rights, trade marks and service marks, business names and domain names, rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"**Insolvent**" means a party:
i)   takes or any other person takes any step or action in connection with the appointment of an administrator in respect of it;
ii)   gives notice under section 84 of the Insolvency Act 1986 of or purposes or passes a resolution for its winding up (save for the purpose of a solvent restructuring);
iii)   has a winding up petition based upon a petition debt with a value of at least £10,000 presented against it;
iv)   is subject to a notice of intention to appoint an administrator;
v)   has a receiver, administrator or provisional liquidator appointed;
vi)   has a winding up order made by a court in respect of it;
vii)   proposes, makes or is subject to a company voluntary arrangement, a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement (unless in that last case that scheme has been previously approved by the other party in writing);
viii)   ceases to trade;
ix)   is unable to pay its debts as and when they fall due; or
x)   is subject to any analogous procedure or process in any other jurisdiction.

"**Installation**" means the installation of the On-Premise Software by Business Micros onto the Customer's Designated Equipment;

"**Installation Date**" means the estimated date for the Installation of the Software as determined by Business Micros;

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

"**Liability**" liability arising out of or in connection with these terms and conditions and / or any Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or failure to perform or defect or delay in performance of, any of a party's obligations under these terms and conditions and / or any Contract and including any failure, defect or error in the Software, the Documentation and/or the Database, in each case howsoever caused including if caused by negligence;

"**On-Premise Software**" means the object code form of the Software licensed to the Customer for Installation;

"**Order Form**" means the order form and/or proposal and/or quotation document(s) setting out the Customer's requirements and agreed between Business Micros and the Customer in writing which incorporates these terms and conditions;

"**Services**" means the Support and Maintenance Services, the Training Services and/or the Additional Services (as applicable) as specified in the relevant Order Form;

"**Software**" means either the On-Premise Software or the Cloud Software (as applicable) licensed by Business Micros to the Customer through which the Database is accessed and as further set out in an Order Form, together with any Updates agreed in writing to be provided by Business Micros to the Customer from time to time as part of the Support and Maintenance Services;

"**Specifications**" means the technical specifications from time to time published by Business Micros in respect of the Software;

"**Subscription Period**" means the fixed period of time applicable to a subscription licence set forth in the relevant Order Form for which the Customer is licensed to use and access the Cloud Software;

"**Support and Maintenance Services**" means the support and maintenance services to be provided by Business Micros in relation to the Software as set out in the relevant Order Form;

"**Support Term**" means the period set out in the Order Form for which the Support and Maintenance Services shall be provided by Business Micros;

"**Training Services**" means the Training Services to be provided by Business Micros as set out in the relevant Order Form or otherwise agreed in writing from time to time between the Customer and Business Micros;

"**Updates**" means patches, additions, modifications, and new versions of the Software incorporating such patches, additions and modifications that are provided to the Customer by Business Micros as part of the Support and Maintenance Services and are not included in the initial delivery of the Software. Updates do not include additions or modifications that Business Micros considers to be a separate product or for which Business Micros charges its customers extra or separately;

"**Virus**" means a program code, programming instruction or set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, or other code typically designated as a virus, including but not limited to Trojans, worms and logic bombs;

"**Warranty Period**" means a period of 90 days from and including the date of Installation of the On-premise Software;

"**Website**" means www.businessmicros.co.uk

1.2 Interpretation:
1.2.1   References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as reference to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

1.2.2   any words following the words "include", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;

1.2.3   unless the context otherwise requires, references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental agency or department, state or agency of state or any entity (in each case whether or not having separate legal personality);

1.2.4   Headings to clauses in these terms and conditions are for the purpose of information and identification only and shall not be construed as forming part of the terms and conditions.

2.   Ordering

2.1   Order Forms. Each Order Form is an offer by the Customer to purchase Software and / or Services from Business Micros pursuant to these terms and conditions. A contract ("**Contract**") for the supply of Software and / or Services is formed when Business Micros accepts the Order Form. Business Micros may accept or reject any Order Form at its sole discretion.

2.2   No cancellation. The Customer shall not be entitled to cancel an Contract after it has been accepted by Business Micros unless Business Micros provides its prior written consent to such cancellation.

2.3   Cancellation Payment. Where there is an agreed cancellation of a Contract, the Customer shall pay to Business Micros a cancellation fee equal to the higher of:

2.3.1   a sum representing the value of the work carried out by Business Micros up to and including the cancellation date of the relevant Contract; or

2.3.2   60% of the Fees quoted in the relevant Contract.

3.   Licence

3.1   Grant of Licence. Subject to these terms and conditions, together with the terms of the relevant Contract, Business Micros hereby grants to the Customer a non-exclusive, non-transferable and non-sub licensable licence to access and use the Software (and where appropriate, the Documentation) solely in connection with the Database and for no other purpose;

3.2   Licence Term. An Order Form will identify whether the Customer is purchasing a subscription licence or a perpetual licence. In the event of a subscription licence, the Subscription Period will be included in the Order Form.

3.3   Delivery. If the Customer licenses On-premise Software, the On-Premise Software and associated Documentation shall be delivered by electronic means. If the Customer licenses Cloud Software, Customer will receive access to the Cloud Software via the Cloud Site.

3.4   License Restrictions. Customer agrees that it will not (and will ensure that its Authorised Users will not):

3.4.1   attempt to disassemble, decompile or reverse engineer (save to the extent such right may not be excluded under applicable law), translate, modify, lease, rent, loan, redistribute, sub-lease, sub-licence, re-sell or create derivative works from any aspect of the Software, the Database, the Services, the Website and/or the App;

3.4.2   remove any product identification, proprietary, copyright or other notices contained in the Software or Documentation;

3.4.3   provide or otherwise make available the Software to any person other than the Authorised Users and the Customer will procure that all Authorised Users comply with these terms and conditions;

3.4.4   access the Website and / or the App or use the Software to perform any unlawful activity or to store or transmit or otherwise use any illegal content;

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

3.4.5   introduce any Virus into the Software, the Website, the App or Business Micros' other networks and/or systems;

3.4.6   access or attempt to access the information or content of other customers or users or to penetrate or attempt to penetrate any security measures; or

3.4.7   use the On-Premise Software on any equipment other than the Designated Equipment; or

3.4.8   use the Cloud Software in any manner other than as contemplated by these terms and conditions and / or the relevant Contract.

3.5   <u>Lifetime of products</u>. Business Micros shall be entitled to determine the life span of any of the products and services that it offers to customers at its sole discretion. Where Business Micros intends to discontinue any product or service, it shall notify the Customer in writing in advance of any discontinuation of the relevant product or service.

3.6   <u>Third party access to Software</u>. The Customer shall not be entitled to provide access to the Software to any third party without the prior written consent of Business Micros. Where the Customer provides access to use the Software to any third party in accordance with this clause:

3.6.1   the Customer shall be responsible for ensuring that such third party is made aware of these terms and conditions and will comply with them when using the Software as if they were the Customer; and

3.6.2   any Additional Charges which may be applicable as a result of such third party access must be agreed in writing in advance of the Customer providing such third party with access to use the Software.

4.   Fees, Payment and Invoicing

4.1   <u>Fees</u>. The Customer agrees to pay to Business Micros all undisputed Fees indicated in each applicable Order Form and any Additional Charges agreed from time to time.

4.2   <u>Payment Terms</u>. All payments of Fees and Additional Charges are non-refundable (except as expressly set out in these terms and conditions) and shall be made within thirty (30) days of the date of the relevant invoice.

4.3   <u>Invoicing</u>. Unless otherwise agreed in writing in an Order Form, Business Micros shall invoice the Customer as follows:

4.3.1   for perpetual Software licences, fully in advance;

4.3.2   for subscription Software licences, annually in advance;

4.3.3   for Support and Maintenance Services, annually in advance; and / or

4.3.4   for all other Training Services, Additional Services and/or Additional Charges, monthly in arrears.

4.4   <u>Interest</u>. Business Micros reserves the right to charge the Customer interest in respect of the late payment of any undisputed sum due (whether before or after judgment) at the rate of 5% per annum above the base rate for the time being in force of The Royal Bank of Scotland plc from the due date until payment in full.

4.5   <u>VAT</u>. Unless agreed otherwise in writing, all Fees stated in an Order Form are expressed exclusive of value added tax and any value added tax arising in respect of an Order Form shall be paid by the Customer.

4.6   <u>No set-off</u>. The Customer shall not be entitled to withhold or defer payment on account of any claim, counterclaim or setoff.

5.   Support subscription & Product and Services Payments

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

5.1 Business Micros may offer the Customer options to pay for the Services or the Software by Direct Debit. The Direct Debit payments will be collected from the Customer's nominated account in advance to the value agreed.

5.2 Business Micros may change subscription payment(s) for Support and Maintenance Services at any time by giving a minimum of one month's notice to the Customer or if the Customer agrees to the change in subscription following additional purchases of Software from Business Micros as set out in an Order Form. The Customer has the right to cancel the Direct Debit providing three months' notice is given in writing to Business Micros.

5.3 If the Customer cancels its direct debit payments, Business Micros can suspend provision of the Software and/or the Services with immediate effect without giving written notice to the Customer.

5.4 All Software is provided by Business Micros on the basis that the Customer maintains a subscription for Support and Maintenance Services. Customers who have not purchased a Support and Maintenance Services subscription will not receive any Updates in relation to the Software licensed.

5.5 Customers who have not purchased Support and Maintenance Services for a period of three years or more shall be deemed to have had fair use of the Software and, if the Customer subsequently purchases a Support and Maintenance Services subscription after the three year period, the Customer will be required to pay a re-installation fee equivalent to the purchase price of the Software at the time of purchase of the new Support and Maintenance Services subscription.

6. **Services**

6.1 <u>Support and Maintenance subscription</u>. Business Micros shall provide the Support and Maintenance Services for the duration of the Support Term. Support and Maintenance Services can be purchased by subscription on either an annual, monthly or quarterly basis. Any subscriptions for Support and Maintenance Services will be reviewed annually by Business Micros and Business Micros may, in its absolute discretion, change the Fees in relation to the relevant subscription dependent on level of usage of the Support and Maintenance Services by the Customer.

6.2 <u>Notification of issues</u>. The Customer shall provide prompt written notice to Business Micros upon becoming aware of any errors or issues with the Software with such notice providing a detailed description of the relevant errors or issues and the circumstances in which such errors or issues arose.

6.3 <u>Remedy</u>. Subject to **clause 6.4**, upon receipt of notification from the Customer pursuant to **clause 6.2**, Business Micros shall use all commercially reasonable endeavors to remedy or correct any errors or issues within a reasonable time frame following such notification.

6.4 <u>Restrictions</u>. Business Micros shall not be obliged to provide any Support and Maintenance Services in respect of any errors or issues in the Software which arose as a result of:
6.4.1 the use of the Software not in accordance with the Documentation;
6.4.2 any repair, adjustment, alteration or modification of the Software by any person other than Business Micros without Business Micros' prior written consent;
6.4.3 the merger, in whole or in part, of the Software with any other software;
6.4.4 the use of the Software by any person other than an Authorised User;
6.4.5 the use of the On-Premise Software on any equipment other than the Designated Equipment;

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

6.4.6   the failure by the Customer to implement any bug fixes, patches or other recommendations made by Business Micros in respect of solutions to errors or issues in the Software previously identified by Business Micros;

6.4.7   the failure by the Customer to have valid and up to date anti-virus and firewall software;

6.4.8   any failure of the Customer to maintain the Designated Equipment or keep the Designated Equipment in good working order;

6.4.9   any failure of the Customer to maintain a subscription for Support and Maintenance Services;

6.4.10 the Customer's failure to install and use any Updates to the Software;

6.4.11 the use of the Software for a purpose for which it was not designed; and

6.4.12 the use of the Software in breach of these terms and conditions and / or the relevant Contract.

6.5   <u>Additional Charges</u>. In the event that the errors or issues in the Software arose as a result of any of the circumstances described in **clause 6.4**, Business Micros may (if requested by the Customer and at Business Micros' sole discretion), provide the Support and Maintenance Services notwithstanding that the error or issue results from any of the circumstances described in **clause 6.4**. In such circumstances, Business Micros shall be entitled to levy Additional Charges for the work completed.

6.6   <u>Training Services</u>. If requested by the Customer, Business Micros shall provide the Training Services in relation to the Software. Any Training Services to be provided, together with any associated Additional Charges, must be agreed in writing before being provided by Business Micros.

6.7   <u>Additional Services</u>. If requested by the Customer, Business Micros shall provide Additional Services that may be required by the Customer in relation to the Software. Any Additional Services to be provided, together with any associated Additional Charges, must be agreed in writing before being provided by Business Micros.

7.   Intellectual Property Rights

7.1   <u>Business Micros Property</u>. All Intellectual Property Rights in the Software (including the Documentation), the Website, the App, the Services and the Database are the exclusive property of Business Micros or its licensors (as applicable) and, save as expressly set out in **clause 3.1**, the Customer shall not acquire any right or interest in, or title to, all or any part of the Software (including the Documentation), the Website, the App, the Services or the Database.

7.2   <u>Customer obligations</u>. The Customer shall:

7.2.1   Reproduce on any copy of the Software (and Documentation) (whether in electronic of printed format) Business Micros' copyright and trade mark notices;

7.2.2   maintain an up-to-date written record of the number of copies of the Software and Documentation and their location and upon request promptly produce such record to Business Micros;

7.2.3   notify Business Micros immediately if the Customer becomes aware of any unauthorised use of or access to the whole or any part of the Software (including the Documentation) or the Database by any third party;

7.2.4   without prejudice to the foregoing, take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of Business Micros in the Software (including the Documentation) and the Database; and

7.2.5   provide reasonable access to its premises to Business Micros in order for Business Micros to verify the Customer's compliance with these and conditions and/or the relevant Contract and to recover any On-Premise Software or Hardware which has not been paid for in accordance with these terms and conditions and/or the relevant Contract.

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

7.3   <u>Customer Data</u>. Save as set out in **clause 7.4**, nothing in these terms and conditions and/or any Contract shall serve to assign, transfer or grant to Business Micros any right or interest in, or title to, the Customer Data.

7.4   <u>Licence</u>. The Customer grants to Business Micros, a non-exclusive, non-transferrable licence to store, access and use the Customer Data (including the right to make back-up copies of the Customer Data) solely in connection with the Database and the performance of Business Micros' obligations under these terms and conditions and / or the relevant Contract.

7.5   <u>Use of Customer Data</u>. Notwithstanding **clause 7.3**, Business Micros may reasonably use:

7.5.1   aggregate usage data that it may extract from Customer's general use of the Software, the Website, the App or the Database (which in no event shall include any personal data or identify the Customer);

7.5.2   all feedback that Customer provides with respect to the Software, the Website, the App or the Database.

8.   Warranty

8.1   <u>Mutual Warranties</u>. Each party warrants to the other party that, as of the applicable date of the relevant Contract:

8.1.1   it is duly incorporated and validly existing under applicable laws and in good financial standing;

8.1.2   it is duly authorised to enter into and perform its obligations under these terms and conditions and/or the relevant Contract;

8.1.3   it is in compliance with all applicable laws related to the performance of its obligations under these terms and conditions and/or the relevant Contract, including (without limitation) the Data Protection Laws.

8.2   <u>Business Micros Warranties</u>. Subject to **clause 8.5**, Business Micros warrants to the Customer that:

8.2.1   the On-Premise Software will conform in all material respects to the Specifications for the duration of the Warranty Period;

8.2.2   the Cloud Software will conform in all materials respects to the Specifications;

8.2.3   it will perform the Services with reasonable care and skill; and

8.2.4   the Customer's use of the Software as contemplated by these terms and conditions and/or the relevant Contract does not, so far as Business Micros is aware, infringe the Intellectual Property Rights of any third party.

8.3   <u>Specifications</u>. Business Micros may make changes to the Specifications in its sole discretion from time to time provided that such changes do not materially adversely impact the functionality of the Software.

8.4   <u>Notification</u>. The Customer shall give notice to Business Micros as soon as it is reasonably able upon becoming aware of a breach of warranty.

8.5   <u>Limitations</u>. The warranties set forth in **clause 8.2** shall not apply to warranty claims arising out of or in connection with:

8.5.1   the use of the Software not in accordance with the Documentation;

8.5.2   modifications to the Software or source code which were not authorised in writing by Business Micros (with such authorisation to be given at Business Micros' absolute discretion);

8.5.3   the use of the Software by the Customer in breach of these terms and conditions and/or the relevant Contract.

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

8.6 <u>Remedies</u>. Business Micros' sole Liability (and Customer's exclusive remedy) for any breach of the warranties set forth in **clause 8.2** shall be, in Business Micros' sole discretion, to either (a) use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the reported non-conformity or infringement; or (b) to replace or modify the non-conforming or infringing Software so that it conforms or becomes non-infringing without substantially compromising its functionality. If Business Micros determines such remedies to be impracticable within a reasonable period of time, Business Micros may terminate the applicable Contract and refund the Fees paid for the non-conforming or infringing Software.

8.7 <u>Disclaimer</u>. THE WARRANTIES IN THIS **CLAUSE 8** ARE LIMITED WARRANTIES AND EXCEPT AS EXPRESSLY SET FORTH IN THIS **CLAUSE 8**, BUSINESS MICROS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUSINESS MICROS MAKES NO WARRANTY THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE TIMELY, UN-INTERRUPTED OR ERROR-FREE.

9. **Limitation of liability**

9.1 <u>No limit</u>. Nothing in these terms and conditions or any Contract shall limit or exclude Business Micros' Liability for: i) death or personal injury resulting from its negligence; or ii) fraud or fraudulent misrepresentation.

9.2 <u>Limitation on liability.</u> Subject to **clause 9.1**, Business Micros' maximum aggregate Liability which arises from Events which occur in any one calendar year will be limited to £10,000.

9.3 <u>Exclusions of liability</u>. Subject to **clause 9.1**, Business Micros shall have no Liability to the Customer for any:

9.3.1 loss of profit (whether direct, indirect or consequential);

9.3.2 loss of use, loss of revenue, loss of production or loss of business (whether direct, indirect or consequential);

9.3.3 loss of goodwill, loss of reputation or loss of opportunity (whether direct, indirect or consequential);

9.3.4 loss of bargain (whether direct, indirect or consequential);

9.3.5 loss of use or value of any data or software (whether direct, indirect or consequential);

9.3.6 liability of the Customer to any third parties (whether direct, indirect or consequential);

9.3.7 indirect, consequential or special loss, even if such loss was reasonably foreseeable or Business Micros had been advised of the possibility of the Customer incurring the same.

9.4 <u>The Database.</u> Business Micros accept no Liability in relation to the data or information (including Customer Data) contained in the Database or otherwise used by the Customer in connection with the Software. It is the Customer's responsibility to verify the data or information (including the Customer Data) contained in the Database for accuracy and completeness. Business Micros does not provide any guarantee or assurance that the data or information (including the Customer Data) contained in the Database will be accurate or complete and any use of or reliance upon the data or information (including the Customer Data) contained in the Database will be at the Customer's sole risk.

9.5 <u>Single claim for the same loss</u>. If a number of Events give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under these terms and conditions.

9.6 <u>No conferred rights or remedies</u>. Nothing in this **clause 9** shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

10. **Confidentiality**

10.1   Obligations. Each party undertakes that it will, subject to **clause 10.2**:

10.1.1   only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under these terms and conditions and/or the relevant Contract;

10.1.2   keep the other party's Confidential Information secret, safe and secure;

10.1.3   not disclose the other party's Confidential Information to any other person.

10.2   Exclusions. Each party may disclose the other party's Confidential Information:

10.2.1   to the extent required by law, by an order of a court of competent jurisdiction or regulatory body to which that party is subject or to which that party submits;

10.2.2   to those of its officers, directors, employees and professional advisors who need access to that Confidential Information so that it can perform its obligations and exercise its rights under these terms and conditions and/or the relevant Contract.

10.3   Third party compliance. A party disclosing the other party's Confidential Information under **clause 10.2** will procure that each person to whom it discloses that Confidential Information is made aware of the confidential nature of the Confidential Information and will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **clause** 10.

11. **Risk and Title**

11.1   Risk. Risk in the On-Premise Software (including the relevant Documentation) will pass to the Customer on the Installation Date. Risk in any Hardware will pass to the Customer on the date of delivery to the Customer.

11.2   Title. Without prejudice to **clause 7.1**, title to the On-Premise Software (including the relevant Documentation) and any Hardware shall pass to the Customer upon payment by the Customer in full of the applicable Fees under the relevant Contract.

12. **Termination and Suspension**

12.1   Mutual termination rights. Either party may terminate a Contract by notice in writing to the other party:

12.1.1   if the other party commits a material breach of any term of these terms and conditions and/or the relevant Contract and, in the case of a breach capable of being remedied, fails to remedy such breach within sixty (60) days of a written request to remedy by the non-breaching party;

12.1.2   if the other party becomes Insolvent.

12.2   Business Micros termination. Business Micros shall be entitled to terminate a Contract if the Customer fails to make payment of any undisputed Fees or Additional Charges within 14 days of the due date.

12.3   Suspension. Without prejudice to **clause 12.2**, Business Micros shall be entitled to suspend the provision of the Services and/or the Customer's access to the Software in the event that the Customer fails to make payment of any Fees or Additional Charges on the due date (but this will not apply to any Fees that are subject to a bona fide dispute).

12.4   Consequences of termination. Upon termination of a Contract for any reason:

12.4.1   all licences granted under the Contract shall immediately terminate;

12.4.2   the Customer will be entitled to access the Software on a 'view only' basis, in order to allow the Customer to view historic usage data without any other rights to use the Software for any reason; and

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

12.4.3 all outstanding invoices submitted in accordance with these terms and conditions shall become due and payable by the Customer.

12.5 <u>Return of Information</u>. Immediately upon termination of a Contract for any reason, the Customer shall, at Business Micros' sole option, either: i) return all copies of the Software, Documentation, Hardware and Confidential Information (belonging to Business Micros) in its possession; or ii) delete and destroy all copies of the Software, Documentation, Hardware and Confidential Information (belonging to Business Micros) in its possession and certify in writing to Business Micros that the Customer has complied with this **clause 12.5**.

13. Force majeure

13.1 <u>Event of Force Majeure</u>. Neither party shall be liable for any breach of its obligations under these terms and conditions and/or any Contract resulting from causes beyond its reasonable control including but not limited to fires, strikes or lock outs (affecting its own or third party workforce), insurrection or riots, acts of terrorism, embargoes, container shortages, wrecks or delays in transportation, failure of a utility service or telecommunications network or the internet, inability to obtain supplies and raw materials requirements, or regulations of any civil or military authority (each an '**Event of Force Majeure'**).

13.2 <u>Notification of Force Majeure</u>. Business Micros and the Customer agree to give notice to the other upon becoming aware of an Event of Force Majeure, with such notice to contain all reasonable details of the circumstances giving rise to the Event of Force Majeure.

13.3 <u>Termination</u>. If a default due to an Event of Force Majeure shall continue for more than four (4) weeks then the party not in default shall be entitled to terminate the relevant Contract. Neither party shall have any liability to the other in respect of the termination of the relevant Contract pursuant to this **clause 13.3**.

14. Disaster Recovery

14.1 The Customer shall be responsible for ensuring that it have sufficient back up and disaster recovery protocols in place in order to restore the data (including the Customer Data) within the Database in the event of any loss, damage or corruption to such data. Business Micros is not responsible for providing backup copies of any data (including the Customer Data) within the Database to the Customer and it is the Customer's responsibility to put in place appropriate measures and insurance to protect against any loss, damage or corruption to such data.

15. Waiver

15.1 The waiver by either party of a breach or default of any of the provisions of these terms and conditions and/or any Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Notices

16.1 Any notice request instruction or other document to be given in connection with these terms and conditions and/or any Contract shall be delivered or sent by first class post or by e-mail to the address or e-mail address of the other party set out in the relevant Contract (or such other address as may have been notified by a party in writing to the other) and any such notice or other document shall be deemed to have been served:

16.1.1 if delivered, at the time of delivery; and

16.1.2 if sent by post or e-mail, upon the expiration of 48 hours after posting or e-mailing.

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

17. Invalidity and severability

17.1 If any provision of these terms and conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

18. Entire agreement

18.1 These terms and conditions, together with the relevant Contract, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into a Contract, 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 expressly set out in the relevant Contract and/or these terms and conditions.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions and/or any Contract.

18.4 Nothing in this **clause 18** shall limit or exclude any liability for fraud or fraudulent misrepresentation.

19. Successors

19.1 These terms and conditions together with the relevant Contract shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

20. Assignation and sub-contracting

20.1 The Customer shall not be entitled to assign, sub-contract otherwise transfer any Contract nor any of its rights or obligations under these terms and conditions nor sub-license the use (in whole or in part) of the Software without the prior written consent of Business Micros.

21. Third Party Rights

21.1 These terms and conditions do not confer any rights on any person or party (other than the parties specified in the relevant Contract and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. Non-solicitation

22.1 The Customer agrees that it will not, without the prior written consent of Business Micros, directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person during the term of any Contract and for a period of 1 year following termination of the relevant Contract for any reason, solicit or entice, or endeavor to solicit or entice, away from Business Micros any person employed by Business Micros in the then preceding 12 months and whose role either wholly or partly relates to the supply of the Services or the Software. For the purposes of this clause, "**solicit**" or "**entice**" means the soliciting or enticing of such person with a view to engaging such person as an employee, director, sub-contractor, consultant or independent contractor or through a company owned by such person or his or her family, but will not apply in the case of any such person responding without enticement to a job advertisement which is capable of being responded to by members of the public generally.

BM software solutions Ltd t/a Business Micros
The Cross, Main Street, Penpont, Dumfriesshire, DG3 4BP
Tel +44 (0)1848 330588: Email **Info@businessmicros.co.uk : www.businessmicros.co.uk**

23.   <u>**Law**</u>

23.1   These terms and conditions, together with any Contract, and any non-contractual disputes arising out of or in connection with them, shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.