

DAYTA DESIGNS LTD – SOFTWARE LICENCE & SUPPORT TERMS

These software licence and support terms (**Terms**), together with the terms set out in the accompanying order form (**Order**), comprise the agreement (**Agreement**) between you, the customer specified in the Order (**you** or **Customer**) and Dayta Designs Limited (**we, us, our**), pursuant to which we will license the use of the software described in the Order (**Software**) and provide certain services in relation to that Software.

By submitting an Order or by accepting these Terms, you agree to contract on the basis of these Terms and in doing so agree that they prevail over any other terms which you may seek to impose or introduce, including (without limitation) any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by you.

Any person submitting an Order, or making any other representation, on your behalf represents and warrants that they have the legal right and authority to bind you to the terms of the Agreement.

You have evaluated the Software and satisfied yourself as to its suitability and confirm that you have not relied on any representation or statement other than as set out in the Agreement.

The Agreement supersedes all and any previous agreements in relation to its subject matter.

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in the Agreement.

Acceptable Use Policy: our acceptable use policy available at www.dayta.co.uk

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Commencement Date: the date the Agreement shall commence, as specified in the Order.

Confidential Information: all and any confidential information (in whatever form) whether or not marked as such including but not limited to commercial, financial, marketing and technical information relating to the disclosing party's business, services, products, clients, consultants, employees, suppliers, finances, proprietary computer software, website, know how, trade secrets, intellectual property, future product plans, future project plans and documentation in any form or medium whatsoever whether disclosed orally or in writing relating to any of the foregoing (including copies thereof).

Consultancy Rates: our standard consultancy day rates in force from time to time.

Consultancy Services: those professional consultancy services (if any) which we agree to provide to you pursuant to an Order.

Current Version: the current or most recent release of the Software.

Customer Data: the data provided and/or entered by you or on your behalf in connection with the Agreement.

Customisations: any customisations, developments, enhancements or modifications of the Software created by us pursuant to the Agreement.

Data Protection Laws: means all applicable laws and regulations relating to the processing of personal data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 once in force (**GDPR**) and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms 'Data Controller', 'Data Processor', 'Process(ing)', 'Data Subjects' and 'Personal Data' shall have the meaning given to them in the DPA or GDPR;

Documentation: the documents provided by us relating to the Software, including technical documentation and (where applicable) specification(s).

Fees: the fees and/or any other charges set out in the Order.

Initial Licence Term: the initial term of the Licence, as specified in the Order.

Initial Support Term: the initial support term of 12 months (unless otherwise agreed in writing), which shall commence on the Service Commencement Date.

Licence: the licence of the Software granted under clause 2.1.

Maintenance Release: a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Privacy Policy: our privacy policy available at www.dayta.co.uk/privacypolicy

Renewal Period: the renewal period for the Licence and Support Fees (as applicable), as described in clauses 2.1 and 4.1 respectively.

Sage Products: the Sage product(s) described in the Order.

Services: the Support Services and/or Consultancy Services, as applicable.

Service Commencement Date: the date from which the Support Services will be provided, as agreed in writing.

Service Level Agreement: our service level agreement available at www.dayta.co.uk/SLA

Support Fees: the support fees set out in the Order or otherwise charged in accordance with the Agreement.

Support Services: the support services described in the Service Level Agreement.

Users: your employees and officers authorised to use the Software, subject to the User Limit.

User Limit: the maximum number of Users permitted to use the Software, as set out in the Order.

Virus: 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.

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2. LICENCE

- 2.1 In consideration of the payment of the relevant Fees, we grant you a limited, non-exclusive, non-transferable, non-sublicensable right to install and use the Software only with the specific configuration of Sage Product(s) used by you under licence from Sage, as specified in the Order (your **Sage Instance**), subject to the conditions set out in this clause 2. The Licence shall run for the Initial Licence Term and shall (unless otherwise agreed) automatically renew thereafter on an annual rolling basis unless terminated in accordance with clause 15 below.
- 2.2 In relation to the scope of use:
- (a) the number of persons using the Software must not exceed the User Limit;
 - (b) for the purposes of clause 2.1, use of the Software shall be restricted to (i) use in object code form, and (ii) processing your data for your normal internal business purposes, subject to clause 2.6 below.
 - (c) you may not use the Software other than as specified in clause 2.1 and clauses 2.2(a) and 2.2(b) without our prior written consent and you acknowledge that additional fees may be payable on any change of use approved by us.
 - (d) you may make backup copies of the Software as may be reasonably necessary for its lawful use. You shall take all reasonable steps to prevent unauthorised copying.
 - (e) except as expressly stated in this clause 2, you have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by you, unless we are prepared to carry out such actions at a reasonable commercial fee or have provided the information necessary to achieve such integration within a reasonable period. You agree to request us to carry out such action or to provide such information (and shall meet our reasonable costs in doing so) before undertaking any such reduction.
- 2.3 You may not use any information provided by us or obtained by you during any such reduction permitted under Clause 2.2(e) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 2.4 You shall not, without our prior written consent:
- (a) sub-license, assign or novate the benefit or burden of the Licence in whole or in part;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance;
 - (c) deal in any other manner with any or all of your rights and obligations under this Agreement;
 - (d) access all or any part of the Software or the Documentation in order to build a product or service which competes with ours; or
 - (e) use the Software or the Documentation to provide services to third parties.
- 2.5 You shall:
- (a) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, shall promptly notify us; and
 - (b) pay, for broadening the scope of the licences granted under this Agreement to cover any unauthorised use, an amount equal to the fees which we would have levied (in accordance with our normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.
- 2.6 The rights provided under this clause 2 extend to use by your subsidiaries, holding companies or any associated or affiliated companies, subject always to the limitations and restrictions on use set out herein.

3. SAGE SOFTWARE AND DEPENDENCY

- 3.1 By subscribing for Sage Products you thereby enter into a direct contractual relationship with Sage on Sage's standard terms [available at: www.dayta.co.uk/Sagelicense (your **Sage Contract**). You agree and accept that all responsibility and liability in respect of the Sage Contract and Sage Products lies exclusively with Sage. Our only responsibilities and obligations are those we expressly undertake in this Agreement in respect of our Software and Services.
- 3.2 You acknowledge and agree that access to and use of the Software is entirely dependent on the availability and proper functioning of your Sage Instance and that we have no control over your Sage Instance or the services you receive from Sage or other third parties. You are responsible for ensuring the availability of your Sage Instance, including the payment of all fees and compliance with applicable terms of use. You agree that we are not responsible for any inability to access or use the Software, or interruption or degradation of the performance of the Software, to the extent caused by any issues, problems, errors, delays, malfunctions or inaccessibility relating to your Sage Instance or to third party technology or services, whether as a result of your defaults or otherwise. You are solely responsible for the configuration of your Sage Instance and all technology and services necessary to access and use the Internet and your Sage Instance.
- 3.3 You undertake at all times to comply with your obligations under the Sage Contract and agree that this Agreement may be suspended or terminated in the event that you fail to do so.

4. SERVICES

Support Services

- 4.1 In consideration of your payment of the Support Fees, we shall provide the Support Services for the Initial Support Term. Thereafter, the provision of the Support Services shall unless otherwise agreed automatically continue for successive periods of 12 months unless terminated in accordance with clause 15 below.
- 4.2 We shall provide the Support Services during Normal Business Hours and use reasonable endeavours to comply with the Service Level Agreement in effect at the time the Services are provided. The response times set out in the Service Level Agreement are indicative only and no warranties or guarantees are given in respect of the achievement of any standards or timescales.
- 4.3 We may, on prior notice to you, make changes to the Support Services, provided such changes do not have a material adverse effect on your business operations. Enhanced support services are available upon request.

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- 4.4 As part of the Support Service, and for no additional charge, we may from time to time issue Maintenance Releases. You shall make reasonable efforts to install Maintenance Releases promptly upon receipt of notification of their availability. We (i) are under no obligation with respect to the correction of errors which would be rectified by the installation of the latest Maintenance Release, and (ii) give no warranties or undertakings with respect to the rectification of errors to any version of the Software other than the Current Version. For the avoidance of doubt, (i) the provision of Maintenance Releases shall apply only during the term of the Agreement, and (ii) unless you take out annual maintenance, nothing entitles you to any new version of the Software which from time to time is publicly marketed and offered for purchase by us in the course of our normal business.
- 4.5 We shall have no obligation to provide the Support Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by us);
 - (b) failure to maintain the necessary environmental conditions for use of the Software;
 - (c) use of the Software in combination with any equipment or software not approved or designated by us for use with the Software, or any fault in any such equipment or software;
 - (d) modifications of the Software by any person other than us or a person acting under our instructions;
 - (e) any breach of your obligations under this Agreement howsoever arising or having the Software maintained by a third party;
 - (f) any modification not authorised by us; or
 - (g) operator error.
- 4.6 For the avoidance of doubt, Support Services do not include training, which will be provided only on prior written agreement.
Consultancy Services
- 4.7 We will provide the Consultancy Services in accordance with the Agreement and the applicable Order in a timely and professional manner, using reasonable endeavours to comply with any time schedules agreed in writing with you. Any such times or dates shall be estimates only and time for performance shall not be of the essence.
- 4.8 We will use reasonable endeavours to ensure the continuity of the Consultancy Services and of any personnel engaged in the Consultancy Services but shall have discretion to make changes if needed, in which event we shall provide replacements of similar status and experience.
- 4.9 We shall ensure that the personnel engaged in providing the Consultancy Services will be suitably qualified and have the necessary levels of skill and expertise required to carry out any tasks for which they are responsible.
- 4.10 We reserve the right to make changes to the Services which are necessary to comply with applicable law or safety requirements, or which do not materially affect the nature or quality of the Services, and we shall notify you of any such changes. Save as aforesaid, either party may request changes to the nature or scope of the Services, which shall be submitted in writing and be of sufficient detail to enable the other party to assess the scope and/or impact of the proposed change and any such change shall be effective only once agreed by both parties.
- 5. CHARGES AND PAYMENT**
- 5.1 You will pay all Fees in accordance with the terms set out in the Order. We will invoice you on the Commencement Date and you shall make payment upon receipt of our invoice. We are under no obligation regarding the provision of the Licence and the Services until or unless we have received payment in full of all applicable Fees. Where a trial period has been agreed, the Initial Licence Term begins on the first day immediately following the end of the agreed trial period, conditional upon payment of all applicable Fees. Fees for each Renewal Period are due and payable immediately upon commencement of the applicable Renewal Period. You will promptly provide us with all assistance reasonably required in connection with invoicing and payment including (without limitation) the provision of appropriate purchase order details.
- 5.2 By entering into the Agreement, you hereby commit to payment of the Fees for the full term of the Agreement, notwithstanding that we may accept payment on a periodic basis (e.g. monthly or quarterly). In the event of your breach of the terms of the Agreement, all monies shall become immediately due and payable, including any relating to the remainder of the relevant term.
- 5.3 If we have not received payment in accordance with the terms of the Agreement we may, without prejudice to any other rights and remedies and without liability to you, suspend access to all or part of the Software and Services (as applicable) and we shall be under no obligation to provide any or all of the Software or the Services while the invoice(s) concerned remain unpaid.
- 5.4 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in pounds sterling unless otherwise agreed;
 - (b) are non-cancellable and non-refundable;
 - (c) are payable in full, net of all charges, and without set-off, deduction or withholding; and
 - (d) are exclusive of value added tax or other local taxes, which shall be added to our invoice(s) at the appropriate rate.
- 5.5 We shall be entitled to increase the Fees upon notice to you and any such changes shall take effect from the start of the next Renewal Period, subject always to the rights of termination under clause 15.
- 6. OUR WARRANTIES & OBLIGATIONS**
- 6.1 We warrant that the Software will conform in all material respects to the Documentation for a period of 90 days from the commencement of the Licence (**Warranty Period**). If, within the Warranty Period, you notify us in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Documentation, and such defect or fault does not result from you, or anyone acting with your authority, having amended the Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by us, or it has not been loaded onto Supplier-specified or suitably configured equipment, we shall, at our option, do one of the following:
- (a) repair the Software;
 - (b) replace the Software; or

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- (c) terminate the Licence immediately by notice in writing to you and refund any of the Fees attributable to the Licence paid by you as at the date of termination (less a reasonable sum in respect of your use of the Software to the date of termination) on return of the Software and all copies thereof,

provided you supply all information that may be necessary to assist us in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable us to re-create the defect or fault.

- 6.2 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under the Agreement. We do not warrant that the use of the Software will be uninterrupted or error-free.
- 6.3 You accept responsibility for the selection of the Software to achieve its intended results and for its compatibility with any other software or products used by you. You acknowledge that the Software has not been developed to meet your individual requirements.
- 6.4 We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.5 The Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

7. YOUR OBLIGATIONS

- 7.1 You shall:

- (a) provide us with:

(i) all necessary co-operation in relation to the Agreement; and
(ii) such documents, data, drawings, plans, diagrams, designs, reports, specifications or other information as we may reasonably require in order to provide the Services, including but not limited to Customer Data, security access information and configuration services, and ensure all information is complete, true and accurate in all material respects;

- (b) appoint a representative, who shall have the authority contractually to bind you on matters relating to the Services;

- (c) make available such staff and applicable sub-contractors or suppliers (if any) as may be required for us to provide the Services and ensure that they co-operate fully with us in all material respects;

- (d) carry out all other responsibilities set out in the Agreement in a timely and efficient manner;

- (e) ensure that Users comply with the terms of the Agreement (you hereby accepting responsibility for any User's breach);

- (f) obtain and maintain all licences, consents, and permissions necessary for us, our contractors and/or agents to perform any obligations under the Agreement;

- (g) ensure that your network and systems comply with the relevant specifications provided by us or Sage from time to time;

- (h) be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet; and

- (i) comply with all applicable laws and regulations with respect to your activities under the Agreement.

- 7.2 You acknowledge that our ability to provide the Services depends on you satisfactorily complying with the obligations stated in this Agreement and that should you delay or fail to perform any such obligations then we will not be liable in any way for any delay, loss or damage, cost increase or other consequences arising from such failure.

- 7.3 You shall not access, store, distribute or transmit any Viruses, or breach the terms of our Acceptable Use Policy. We reserve the right, without liability and without prejudice to our other rights, to disable your access to any material that breaches the provisions of this clause.

8. DATA AND SECURITY

- 8.1 You shall own all right, title and interest in and to all Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the same.

- 8.2 You warrant that you own all rights in Customer Data and that our use and processing of Customer Data in accordance with the Agreement will not infringe third party rights. You hereby grant us the non-exclusive worldwide right and licence to process, copy, store, transmit, display, print, view and otherwise use Customer Data to the extent required for the provision of the Services.

- 8.3 We are not responsible for maintaining backup copies of any Customer Data. You accept full and exclusive responsibility in respect of the security and backup of any and all Customer Data and for the security and safety of your systems and software. You agree to take regular data backups to protect against data loss, corruption or other damage. Our liability in relation to any data loss, corruption or security will be limited to that resulting from our failure to comply with any contractual commitments given and we do not otherwise accept responsibility in those respects.

- 8.4 Any Personal Data provided directly to us by Data Subjects (and in respect of which we are the Data Controller) will be processed in accordance with our Privacy Policy. Each party (we and you) agrees to comply with the provisions and standards required by the Data Protection Laws.

- 8.5 Where we process any Personal Data on your behalf when performing our obligations under the Agreement, i.e. where we act as Data Processor:

- (a) we will process the Personal Data only on your behalf (or, if so directed, for your affiliates) for the purposes of performing this Agreement and in accordance with instructions contained in this Agreement or the lawful instructions received from you;

- (b) we will comply with the data security related requirements of Data Protection Laws and shall (i) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and (ii) take reasonable steps to ensure the reliability of personnel, suppliers and subcontractors who may process Personal Data and ensure that all such personnel are bound by a duty of confidence to maintain the confidentiality of the Personal Data;

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- (c) with effect from 25 May 2018, we shall (i) at your expense, provide reasonable assistance with your compliance with any exercise by Data Subjects of their rights under Data Protection Laws, (ii) put in place a process whereby you will be notified of new sub-processors processing Personal Data in relation to the Agreement, (iii) where we become aware of a breach relating to your Personal Data (Personal Data Breach), notify you without undue delay, (iv) provide you with reasonable assistance in connection with your obligations under Data Protection Laws to notify data protection authorities and/or affected Data Subjects in the event of a Personal Data Breach, and (v) on receipt of a request in writing, provide you with reasonable evidence of our compliance with this clause 8.5; and
 - (d) on termination or expiry of this Agreement cease processing the Personal Data and delete such Personal Data from our systems (subject to any legal obligation that requires such Personal Data to be retained).
 - (e) .
- 8.6 You agree that we may transfer Personal Data in connection with our performance of the Agreement, including to any subcontractor, and such transfer may be outside the European Economic Area. In such circumstances we will comply with our obligations under Data Protection Laws by (i) taking reasonable steps to ensure the reliability of such subcontractors and prior to any such transfer will enter into a written agreement with such subcontractor containing contractual provisions which ensure an adequate level of protection for the rights and freedoms of Data Subjects in relation to the processing of the Personal Data; and (ii) complying with the requirement in Data Protection Laws to ensure an adequate level of protection to any Personal Data that is transferred.
- 8.7 You hereby warrant and represent that:-
- (a) you have complied, and will at all relevant times comply, fully with the Data Protection Laws;
 - (b) you have obtained and will at all relevant times maintain all rights, permissions, consents and authorisations to permit us to Process your Personal Data in accordance with the terms of the Agreement; and
 - (c) the Processing of the Customer Personal Data in accordance with the Agreement will not infringe third party rights, including the rights of any Data Subject.
- 8.8 Our performance under the Agreement is conditional upon the warranties and representations given in clause 8.6.
- 8.9 You acknowledge that when acting as a Data Processor, we are reliant on you for direction as to the extent we are entitled to use and Process your Personal Data in connection with the Agreement. Consequently, we shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to our actions to the extent that such actions result from instructions received from you, including the terms of this Agreement, or any breach of this Agreement by you.
- 8.10 You accept that the processing of electronic communications is a fundamental requirement for the provision of the Services and you therefore consents to our interception and storage of electronic communications and Customer Data in connection with the Services. You accept that electronic communications involve transmission over the Internet, and over other networks, which are outside our control. You accept the risk associated with electronic communications and the possibility that they may be accessed by unauthorised parties and agrees that we are not responsible for any related delay, loss or damage.
- 9. THIRD PARTY PROVIDERS AND CONTENT**
- You acknowledge that the Software and/or Services may enable or assist you to access the website content of, correspond with, and purchase or acquire products, services, data, information or other content from third parties (together, **Third Party Content**). We make no representation or commitment and shall have no liability or obligation whatsoever in relation to the use of Third Party Content or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party only. You are responsible for checking the relevant third party terms of use, and privacy policy and otherwise clearing Third Party Content for use. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 You acknowledge and agrees that we and/or our licensors own the source code and/or all intellectual property rights in the Software (inclusive of all and any rights in Maintenance Releases and any Customisations), the Services and the Documentation. Except as expressly stated herein, the Agreement does not grant you 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, the Services or the Documentation.
- 10.2 We confirm that we have the rights in relation to the Services, the Software and the Documentation necessary to grant all the rights we purport to grant under the Agreement.
- 10.3 'Dayta' and the Dayta logo are trade marks owned by us and all rights therein are specifically reserved.
- 11. CONFIDENTIALITY**
- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.

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- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 You acknowledge that the Software, Documentation and Services are comprised in our Confidential Information. We acknowledge that Customer Data is your Confidential Information.
- 11.6 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.7 This clause 11 shall survive termination of the Agreement, however arising.
- 12. INDEMNITY**
- 12.1 We shall defend you, your officers, directors and employees against any claim that the Software or Documentation infringes any UK patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify you for any amounts finally awarded against you in judgment or settlement of such claims, provided that:
- (a) we are given prompt notice of any such claim;
 - (b) you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
 - (c) we are given exclusive authority to defend and settle the claim.
- 12.2 You shall defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services, Software and/or Documentation, provided that:
- (a) you are given prompt notice of any such claim;
 - (b) we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
 - (c) you are given exclusive authority to defend and settle the claim.
- 12.3 In the defence or settlement of any claim, we may procure the right for you to continue using the Software or the Documentation, replace or modify the Software or Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on [5] Business Days' notice to you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 12.4 In no event shall we, our employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
- (a) a modification of the Software or Documentation by anyone other than us; or
 - (b) your use of the Software or Documentation in breach of the Agreement or in a manner contrary to our instructions; or
 - (c) your use of the Software or Documentation after notice of the alleged or actual infringement from us or any appropriate authority.
- 12.5 Subject always to the terms of clause 13, the foregoing states your exclusive rights and remedies, and our (including our employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 13. LIMITATION OF LIABILITY**
- 13.1 This clause 13 sets out our entire financial liability (including any liability for the acts or omissions of our employees, officers, agents and sub-contractors):
- (a) arising under or in connection with the Agreement;
 - (b) in respect of any use made by you of the Software, Services and/or Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 13.2 Except as expressly and specifically provided in the Agreement:
- (a) you assume sole responsibility for results obtained from the use of the Software and the Documentation by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with the Software or Services, or any actions taken by us at your direction; and
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement, including (without limitation) any implied term(s) as to satisfactory quality or fitness for purpose.
- 13.3 Nothing in the Agreement excludes liability:
- (a) for death or personal injury caused by our negligence;
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for any other liability which may not be excluded or limited under applicable law.
- 13.4 Subject to clause 13.3:
- (a) We shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for (i) any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss (in each case whether direct or indirect), or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement; and
 - (b) Our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to 100% of the Fees paid or payable by you during the 12 months immediately preceding the date on which the claim arose. For the avoidance of doubt, the said limit applies to all and any indemnities given by us.

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14. SUSPENSION

- 14.1 Without prejudice to any other right, power or remedy and without liability, we reserve the right to limit or suspend the Services:
- (a) if it is reasonably necessary to protect our, or your, interests or the interests of any third party (including other customers) and/or to protect the security or operation of our systems or network or those of our customers;
 - (b) if you breach any of the terms of the Agreement or we reasonably believe you have breached or are about to breach;
 - (c) if you fail to pay any Fees when due;
 - (d) if you fail to cooperate regarding any suspected or actual breach of the terms of the Agreement; or
 - (e) if required to do so by law or further to a request from any regulatory or governmental authority.
- 14.2 We may also impose a temporary suspension for the purpose of repair, maintenance or improvement of any systems. We shall use all reasonable endeavours to keep any such suspensions to a minimum.
- 14.3 We shall not be liable for any suspension of the Services under the above circumstances and you shall not be entitled to any setoff, discount, refund or other credit as a result of such suspension and/or disconnection and you agrees that any such downtime will be exempt from measurement under the Service Level Agreement.

15. TERM AND TERMINATION

- 15.1 This Agreement shall commence on the Commencement Date and continue unless or until terminated in accordance with its terms. The Licence and the Support Services shall automatically renew in accordance with clauses 2.1 and 4.1 respectively unless either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the then current term, in which case the Licence and/or Support Services shall terminate upon the expiry of the then current term.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of the Agreement 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;
 - (c) the other party is or may be (in the reasonable opinion of the first party) unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator or similar appointed or calls a meeting of its creditors or ceases for any other reason to carry on business
- 15.3 On termination of the Agreement for any reason:
- (a) all licences granted under the Agreement, including the Licence, and all Services shall immediately terminate;
 - (b) you shall return and make no further use of any Software, Documentation, equipment, property and/or other items (and all copies of them) belonging to us; and
 - (c) 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 the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. FORCE MAJEURE

We shall have no liability to you under the Agreement if we are prevented from or delayed in performing our obligations under the Agreement, or from carrying on our business, by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that you is notified of such an event and its expected duration.

17. CONFLICT

If there is an inconsistency between any of the provisions of the Agreement, the Order shall prevail over the Terms and the Terms shall prevail over any documents referred to or incorporated into the Terms.

18. VARIATIONS

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Agreement 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. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. RIGHTS AND REMEDIES

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21. SEVERANCE

- 21.1 If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. ENTIRE AGREEMENT

- 22.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover, including (without limitation) any non-disclosure agreements previously entered into by the parties relating to the subject matter hereunder.

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22.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in the Agreement.

23. ASSIGNMENT

23.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

23.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

24. NO PARTNERSHIP OR AGENCY

Each party confirms it is acting on its own behalf and not for the benefit of any other person. Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. THIRD PARTY RIGHTS

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. NOTICES

26.1 Any notice required to be given under the Agreement shall be in writing (which shall include email) and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes, or (in the case of email) sent to enquiries@dayta.co.uk.

26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received on receipt of a 'read receipt' or else the next business day following successful email transmission.

27. GOVERNING LAW

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).