

DAYTA DESIGNS LIMITED – ACCESS AND SUPPORT TERMS

These access and support terms, together with any supplementary terms for specific products or services which are set out or referred to in a proposal issued by us to you or are published on our website from time to time, set out the agreement between you (the **Customer**, or **you**) and Dayta Designs Limited (CRN: 01932302) (**we, us, our**), pursuant to which we will enable you to access and use the products which we agree to make available to you from time to time, and will provide certain services in relation to those products (the **Agreement**).

By accepting our proposal or by otherwise instructing us to provide access to any products or start performance of any services, you agree to contract with us on the basis of these terms, and in doing so you agree that they prevail over any other terms which you may seek to impose or introduce, including any terms set out in or relating to any purchase order, acceptance or acknowledgement issued by you.

Please note, we act as a reseller of certain Sage products. We will administer arrangements between you and Sage in respect of such products, and will provide our own products and services in support of your use of the Sage products, but you acknowledge that you will have a direct contractual relationship with Sage in respect of the Sage products themselves, and that all responsibility and liability in respect of the Sage products lies exclusively with Sage.

Any person accepting a proposal, requesting the supply of products or services, 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 products and services which you request us to provide, and have satisfied yourself as to their suitability, and you 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 its subject matter.

1. INTERPRETATION

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

Activation Date: the date notified by us to you in respect of any Product, with effect from which your licence or (as applicable) subscription for that Product commences, and with effect from which we will undertake implementation and configuration of the Product, in advance of the Product Go Live Date.

Agreement: the agreement between you and us in respect of the Products and Services, incorporating these General Terms and any relevant Supplementary Terms.

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

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 Rights, 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 Fees: the fees payable in respect of any Consultancy Services, as specified in the Proposal or, where applicable, the Order Confirmation, or otherwise as calculated on a 'time and materials' basis in accordance with our Consultancy Rates

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, including any specified in an Order Confirmation.

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

Customer Data: the data provided and/or entered by you or Users or on your behalf in connection with the Agreement for the purpose of using the Services or facilitating your use of the Services.

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

Data Protection Laws: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, any relating to the privacy of electronic communications);

Dayta Product: any of the proprietary software products which we license to you, or permit you to access and use, or which we develop on your behalf in the performance of the Services, including any form, content, interface, software or other material, but excluding any Sage Products incorporated into, interfaced with or made available for use by us in connection with the Dayta Products.

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

General Terms: these general terms and conditions governing access to our Products and Services.

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Intellectual Property Rights: any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trade marks, trade names, service marks, design rights, database rights, website rights, semi-conductor topography rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue for passing off, unfair competition rights, and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world.

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

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

On Premise Software: any Sage Products, Dayta Products and Maintenance Releases (as applicable) which are supplied to you under this Agreement by the installation of such software on hardware located at your premises (and excluding any Products which are delivered as remotely accessed 'software-as-a-service' or 'cloud services').

Order Confirmation: a document issued by us to you confirming our acceptance of your request for the provision of the relevant Products and Services, and setting out certain details of the related Agreement.

Privacy Policy: our privacy policy, as updated from time to time and available on request.

Product: each of the Dayta Products and/or the Sage Products (as applicable) which we agree to make available to you from time to time, including any such products specified in an Order Confirmation.

Product Fees: the fees payable in respect of supply of rights to access and use the Products, as specified in the Proposal or, where applicable, the Order Confirmation.

Product Go Live Date: the date notified by us to you in respect of any Product, with effect from which your rights to access and use that Product commence.

Proposal: any proposal issued by us to you setting out the terms on which we offer to provide specified Products and/or Services to you.

Renewal Date: means (i) in respect of any Product, the next occurring anniversary of the Activation Date (save that, for a Product where a Subscription Period other than 12 months is specified in the Supplementary Terms, the Renewal Date shall be the day following the expiry of the current Subscription Period); and (ii) in respect of the Support Services for any Product, the next occurring anniversary of the Product Go Live Date (save that, for Support Services in respect of a Product where a Subscription Period other than 12 months is specified in the Supplementary Terms, the Renewal Date shall be the day following the expiry of the current Subscription Period).

Sage: in respect of any Sage Product, the relevant Sage contracting entity, as identified in the Sage Contract.

Sage Contract: has the meaning given in clause 3.1.

Sage Product: any software, online software application, or other material which is proprietary to Sage and which Sage licenses to you, or permits you to access and use, pursuant to the Sage Contract, together with all services provided by Sage pursuant to the Sage Contract.

Services: the Support Services, Consultancy Services, and any other services we agree to provide to you from time to time, including any such services specified in an Order Confirmation.

Service Level Agreement: our service level agreement in respect of any Product, as updated from time to time and available on request.

Subscription Period: means: (i) in respect of any Product, the period from the respective Activation Date to the end of the day preceding the first Renewal Date; (ii) in respect of the Support Services for any Product, the period from the respective Product Go Live Date to the end of the day preceding the first Renewal Date; and, in either case, each subsequent period of 12 months (or such other period as is specified in the Supplementary Terms) commencing on a Renewal Date.

Supplementary Terms: any terms applicable to specific Products or Services which are set out or referred to in a Proposal, or published on our website from time to time, and which apply in addition to these General Terms in respect of the relevant Products and Services.

Support Fees: the fees payable in respect of the Support Services, as specified in the Proposal or, where applicable, the Order Confirmation.

Support Services: the support services in respect of any Product described in the Service Level Agreement.

Users: your employees and officers authorised to use the Products.

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.

2. PRODUCTS

2.1 The Agreement shall:

- (a) commence on the date when we issue our Order Confirmation or, if sooner, on the date on which we provide you with access to any of the Products or commence performance of any Services;

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and, subject to earlier termination in accordance with its terms:

- (b) shall continue in effect in respect of each Product, and in respect of the Support Services for each Product, until the end of the first Subscription Period; and
- (c) shall automatically renew in respect of each Product, and in respect of the Support Services for each Product, for successive Subscription Periods, each commencing on the respective Renewal Date, unless either party has notified the other in writing of its intention to terminate the Agreement in respect of that Product (or the Support Services in respect of that Product) at least forty-five (45) days in advance of the relevant Renewal Date.

2.2 Subject always to the provisions of clause 3 in respect of your rights to access Sage Products and the other terms of this Agreement, and in consideration of your payment of the relevant Product Fees, we grant you a limited, non-exclusive, non-transferable, nonsublicensable right:

- (a) in respect of any On Premise Software, to install and use such Products; and/or
- (b) in respect of any Products which are delivered as remotely accessed 'software-as-a-service', to access and use such Products; in each case with effect from the respective Activation Date until the date on which this Agreement is terminated in respect of the relevant Product, provided always that your use of the Products shall be restricted to use for implementation and configuration purposes in the period prior to the relevant Product Go Live Date.

2.3 In relation to the scope of use:

- (a) for the purposes of clause 2, use of the Products shall be restricted to (i) use in object code form only (where applicable), and (ii) use for processing your data for your normal internal business purposes, subject to clause 2.7 below;
- (b) you may not use the Products other than as specified in clause 2.1 and clauses 2.3 (a) and 2.3(b) without our prior written consent and you acknowledge that additional fees may be payable on any change of use approved by us;
- (c) you may make such backup copies of any On Premise Software as may be reasonably necessary for its lawful use, and shall take all reasonable steps to prevent unauthorised copying;
- (d) you have no right to duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any part of the Products or Documentation (as applicable) in any form or media or by any means;
- (e) except as expressly stated in this clause 2.3(e) 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 any of the Products in whole or in part except to the extent that any reduction of the Products to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Products with the operation of other software or systems used by you, which limited right you may exercise only where we have indicated that we are neither prepared to carry out such actions at a reasonable commercial fee nor to provide 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.

2.4 You may not use any information provided by us or obtained by you during any such reduction permitted under clause 2.3(e) to create any software whose expression is substantially similar to that of any of the Products nor use such information in any manner which would be restricted by any copyright subsisting in it.

2.5 You shall not, without our prior written consent:

- (a) sub-license, assign or novate the benefit or burden of this Agreement in whole or in part;
- (b) allow any of the Products 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 Products or the Documentation in order to build a product or service which competes with ours; or
- (e) use the Products or the Documentation to provide services to third parties.

2.6 You shall, if applicable:

- (a) be responsible for preventing any unauthorised access to, or use of, the Dayta Products and 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 rights granted under this Agreement in respect of Dayta Products to cover any unauthorised use by you or your representatives, an amount equal to the Product Fees which we would have levied (in accordance with our normal commercial terms then current) had we granted rights in respect of any such unauthorised use on the date when such use commenced.

2.7 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.

2.8 We reserve the right to make changes to any of the Products which are necessary to comply with applicable law or safety requirements, or which do not materially affect the nature, quality of or access to the Products, and we shall notify you of any such changes in writing in advance of implementing such changes. Save as aforesaid, either party may request changes to the nature or scope of the Products, 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.

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3. SAGE PRODUCTS 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 on Sage's website from time to time (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 the Dayta Products and the Services.
- 3.2 You acknowledge and agree that your right to access to and use the Sage Products is entirely dependent on the availability and proper functioning of the Sage Products (and, where applicable, your specific instance of the relevant Sage Products) and that we have no control over the Sage Products or the services you receive from Sage or other third parties, except to the extent that we are providing Support Services in respect of the Sage Products.
- 3.3 You are responsible for ensuring your continued right to access and use the Sage Products, including the payment of all fees and compliance with applicable terms of use.
- 3.4 You agree that we are not responsible for any inability to access or use the Products, or interruption or degradation of the performance of the Products, to the extent caused by any issues, problems, errors, delays, malfunctions or inability to access the Sage Products or any other third party's technology or services, whether as a result of your default or otherwise. Save to the extent that we provide Services in respect of such configuration, you are solely responsible for the configuration of the Sage Products and all technology and services necessary to access and use the Internet and the Sage Products.
- 3.5 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 and such breach materially impedes the performance of this Agreement.

4. SERVICES

Support Services

- 4.1 In consideration of your payment of the Support Fees, we shall provide the Support Services in respect of each Product with effect from the relevant Product Go Live Date until the date on which this Agreement is terminated in respect of the relevant Product.
- 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 Support 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 written notice to you, make changes to the Support Services, provided such changes do not have a material adverse effect on your business operations.
- 4.4 As part of the Support Service, and for no additional charge, we may from time to time issue Maintenance Releases (including those made available by Sage in respect of Sage Products) in respect of On Premise Software. 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 On Premise Software other than the Current Version.
- 4.5 We shall have no obligation to provide the Support Services to the extent that faults arise from:
- (a) misuse, incorrect use of or damage to the Products from whatever cause (other than any act or omission by us);
 - (b) failure to maintain the necessary environmental conditions for use of the Products;
 - (c) use of the Products in combination with any equipment or software not approved or designated by us or (where applicable) Sage for use with the Products, or any fault in any such equipment or software;
 - (d) modifications of the Products by any person other than us or a person acting under our instructions in line with clause 2.3e;
 - (e) any breach of your obligations under this Agreement howsoever arising or having the Products maintained by a third party;
 - (f) any modification not authorised by us.
- 4.6 For the avoidance of doubt, Support Services do not include training, which will be provided only on prior written agreement as a Consultancy Service.

Consultancy Services

- 4.7 We will provide the Consultancy Services in accordance with this Agreement 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 inform you in advance of such changes to key personnel in writing and provide replacements of comparable 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. We shall further ensure that sufficient resource and personnel will be dedicated to provision of the Consultancy Services to you to deliver the Consultancy Services in accordance with this Agreement..

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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, quality of or access to the Services, and we shall notify you of any such changes in advance and in writing. 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 We will issue our invoices in respect of the Product Fees and the Support Fees in advance of the Subscription Period to which they relate, and will issue invoices in respect of the Product Fees and the Support Fees due in respect of upcoming Subscription Periods around the beginning of the second month preceding the respective Renewal Date (so that, by way of example, where the Renewal Date falls in December, we will issue our invoice around the beginning of the preceding October). For the avoidance of doubt, we shall be entitled to determine the value of the Product Fees and the Support Fees for any subsequent Subscription Period at our discretion, and shall notify you of such Product Fees and the Support Fees through the invoice issued in respect of such Subscription Period.

5.2 You will pay the Product Fees and the Support Fees in advance of the period to which they relate, and you acknowledge that:

- (a) we are under no obligation in respect of the initial provisioning of the Products (or the supply of any related Services) until we have received payment of the Product Fees and Support Fees in respect of the first Subscription Period; and
- (b) save as may be permitted by Sage under the relevant Sage Contract, you will not be entitled to access or use any Product (or receive any related Services) on or after its Renewal Date unless we have received payment in advance for all Product Fees and Support Fees due (to us on behalf of Sage, and to us on our own account, as applicable) in respect of the Subscription Period commencing on that Renewal Date.

5.3 We will issue our invoices in respect of Consultancy Fees in arrears (save where specified to the contrary in our Proposal), on completion of the relevant Services, or on a monthly interim basis at our discretion, and all such undisputed invoices (or the undisputed part of any invoice disputed in part) are payable within thirty (30) calendar days from receipt.

5.4 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.

5.5 By entering into the Agreement in respect of any Subscription Period, you hereby commit to payment of the Product Fees and Support Fees for the full Subscription Period, notwithstanding that we may accept payment on a periodic basis (e.g. monthly or quarterly).

5.6 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, (acting on behalf of Sage or on our own account as applicable) suspend access to or use of all or part of the Products and Services (as applicable) and we shall be under no obligation to provide any or all of the Products or the Services while the undisputed invoice(s) concerned (or the undisputed part of any invoice disputed in part) remain unpaid.

5.7 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.

6. OUR WARRANTIES & OBLIGATIONS

6.1 Without prejudice to the provisions of clause 3 in respect of Sage Products, we warrant that each Dayta Product will conform in all material respects to the Documentation throughout the term of any Subscription Period. If, within a Subscription Period, you notify us in writing of any defect or fault in any Dayta Product 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 Dayta Product in breach of this Agreement or used it outside the terms of this Agreement 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 or approved 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 Product;
- (b) replace the Product or provide you with an alternate means of accomplishing the desired performance of the Product; or
- (c) terminate this Agreement immediately by notice in writing to you and refund any of the Fees attributable to the supply of the Product paid by you as at the date of termination (less a reasonable sum in respect of your use of the Product to the date of termination) such payment to be made (where applicable) on return of any On Premise 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 Products will be uninterrupted or error-free.

6.3 You accept responsibility for the selection of the Products to achieve their intended results and for their compatibility with any other software or products used by you. You acknowledge that the Products have not been developed to meet your individual requirements.

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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 reasonably required with prior written notice in order 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 which we reasonably consider to be necessary for us, our contractors and/or agents to perform any obligations under the Agreement and on which we agree with you in advance (provided always that we shall be relieved from any obligation under this Agreement where the parties are unable to agree on any such licence, consent or permissions);
- (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. 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. CUSTOMER 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.

9. DATA PROTECTION

9.1 For the purpose of this Agreement, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the Data Protection Laws.

9.2 We will collect and process information relating to you in accordance with our Privacy Policy.

9.3 You and we acknowledge that for the purposes of the Data Protection Laws, you are the controller and we are the processor in respect of the personal data relating to any third party which we access or otherwise process in the course of providing the Services or otherwise in connection with this Agreement.

9.4 You and we shall comply with the Data Protection Laws and the Appendix sets out the scope, nature, purpose and duration of the processing.

9.5 We shall, in relation to any personal data processed in connection with the Agreement:

- (a) process that personal data only on your written instructions;
- (b) keep the personal data confidential;

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- (c) comply with your reasonable instructions with respect to processing personal data and with your data protection policies as notified to us from time to time;
- (d) not transfer any personal data outside of the UK unless, in accordance with the Data Protection Laws, we comply with your instructions notified to us from time to time in order for you to ensure that (i) the transfer is to a country approved as providing an adequate level of protection for personal data; or (ii) there are appropriate safeguards in place for the transfer of personal data; or (iii) binding corporate rules are in place; or (iv) one of the derogations for specific situations applies to the transfer;
- (e) assist you at your cost in responding to any data subject access request and to ensure compliance with your obligations under the Data Protection Laws with respect to security, breach notifications, privacy impact assessment and consultations with supervisory authorities or regulators;
- (f) notify you without undue delay and in either case within 48 hours on becoming aware of a personal data breach or communication which relates to your or our compliance with the Data Protection Laws; and
- (g) at your written request, delete or return personal data (and any copies of the same) to you on termination of the Agreement, unless required by the Data Protection Laws to store the personal data.

9.6 We shall take such steps, and comply with all reasonable requirements notified to us by you from time to time to allow us to maintain appropriate technical or organisational measures from time to time, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.

10. THIRD PARTY PROVIDERS AND CONTENT

You acknowledge that the Products 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.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 You acknowledge and agree that we and/or our licensors own the source code and/or all Intellectual Property Rights in the Products (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 Products, the Services or the Documentation.
- 11.2 We confirm that we have the rights in relation to the Services, the Products and the Documentation necessary to grant all the rights we purport to grant under the Agreement.
- 11.3 'Dayta' and the Dayta logo are trade marks owned by us and all rights therein are specifically reserved.

12. CONFIDENTIALITY

- 12.1 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.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law or regulation, not make the other's Confidential Information available to any third party (except to the receiving party's auditors and professional advisors, which the receiving party shall ensure are subject to appropriate obligations in respect of confidentiality) or use the other's Confidential Information for any purpose other than the implementation of the Agreement or in facilitating compliance with applicable laws and regulations.
- 12.3 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.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, unless such loss, destruction, alteration or disclosure relates to Confidential Information disclosed to the third party by the disclosing party in breach of this clause 12.

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- 12.5 You acknowledge that the Products, Documentation and Services are comprised in our Confidential Information. We acknowledge that Customer Data is your Confidential Information.
- 12.6 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.
- 12.7 This clause 12 shall survive termination of the Agreement, however arising.

13. INDEMNITY

- 13.1 We shall defend you, your officers, directors and employees against any claim that the Products or Documentation infringes any UK patent effective as of the date on which this Agreement comes into effect, 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 (including without limitation court costs and reasonable legal fees), provided that:
- (a) we are given prompt written notice of any such claim;
 - (b) you provide reasonable co-operation to us in the defence and settlement of such claim, at our expense;
 - (c) you make no admission or attempt to compromise or settle the claim; and
 - (d) we are given exclusive authority to defend and settle the claim without at any point admitting any liability on your behalf.
- 13.2 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 written 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.
- 13.3 In the defence or settlement of any claim, we may procure the right for you to continue using the Products, Services or the Documentation, replace or modify the Products, Services or Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 5 Business Days' written notice to you without any additional liability or obligation to pay liquidated damages or other additional costs to you.
- 13.4 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) the modification of the Products or Documentation by anyone other than us; or
 - (b) your use of the Products or Documentation in breach of the Agreement or in a manner contrary to our instructions; or
 - (c) your use of the Products or Documentation after notice of the alleged or actual infringement from us or any appropriate authority.
- 13.5 Subject always to the terms of clause 14, 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.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 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 Products, 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.
- 14.2 Except as expressly and specifically provided in the Agreement:
- (a) you assume sole responsibility for results obtained from the use of the Products 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 Products 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.
- 14.3 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.

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14.4 Subject to clause 14.3:

- (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.

15. SUSPENSION

15.1 Without prejudice to any other right, power or remedy and without liability, we reserve the right to limit or suspend the Services and your access to the Products:

- (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 material terms of the Agreement or the relevant Sage Contract to the extent such breach materially impedes the performance of this Agreement, or we reasonably believe you have breached or are about to breach;
- (c) if you fail to pay any undisputed Product Fees, Support Fees or Consultancy Fees when due;
- (d) if you fail to reasonably 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.

15.2 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 and where possible will provide prior written notice of such suspension to you.

15.3 We shall not be liable for any suspension of the Services and/or your access to the Products 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 agree that any such downtime will be exempt from measurement under the Service Level Agreement.

16. TERMINATION

16.1 Without affecting any other right or remedy available to us, we may terminate the Agreement in respect of any Sage Product (and in respect of any related Services) with immediate effect by giving written notice to you if:

- (a) you cease to be entitled to access the relevant Sage Product pursuant to your Sage Contract for any reason; or (b) Sage otherwise requires us to terminate our Agreement with you in respect of the relevant Sage Product.

16.2 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 undisputed amount due (or, in respect of an amount disputed in part, the undisputed part thereof) on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (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; or
- (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.

16.3 On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement, and all Services shall immediately terminate;
- (b) you shall return and make no further use of any Products, Documentation, equipment, property and/or other items (and all copies of them) belonging to us, save that you may retain any information or documentation which you must retain for legal or regulatory purposes and any back ups made in the ordinary course of business for general data recovery purposes; 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.

17. FORCE MAJEURE

Neither party shall be liable to the other party under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its 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, pandemic, 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,

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storm or default of suppliers or sub-contractors, provided that the non-affected party is promptly notified of such event and its duration in writing. The affected party shall use reasonable endeavours to mitigate the effect of the event on the performance of its obligations. If the event prevents, hinders or delays the affected party's performance of its obligations for more than 30 days from the day the non-affected party was notified, either party may terminate the Agreement on written notice to the other party. For the avoidance of doubt, your obligation to pay the Fees under this Agreement is excluded from this clause 17.

18. CONFLICT

If there is an inconsistency between any of the provisions of the Agreement, the Order Confirmation and any Supplementary Terms shall prevail over these General Terms.

19. VARIATIONS

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

20. 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.

21. 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.

22. SEVERANCE

22.1 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.

22.2 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.

23. ENTIRE AGREEMENT

23.1 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.

23.2 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.

24. ASSIGNMENT

24.1 Neither party shall, without the other party's 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, provided however that no such consent shall be required for a party to assign this Agreement to its successor in the event of a merger, sale of substantially all of the party's assets, or similar event, provided that we retain the right to sub-contract performance of our obligations where such sub-contracting does not relieve us of the respective obligations undertaken by us under this Agreement.

25. 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).

26. 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.

27. NOTICES

27.1 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:

(a) Dayta: enquiries@dayta.co.uk; or

(b) Customer: such email as is specified in the Proposal, or, where applicable, the Order Confirmation, or such alternative email as you notify to us from time to time.

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27.2 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.

28. GOVERNING LAW

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

29. 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).

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Appendix

Details of processing

Subject matter and duration of Processing	<p>Personal data which is provided to (including where access to the same is granted to us) or created by us in connection with the provision of the Services to you.</p> <p>We will only process such personal data for as long as is required to comply with the Agreement and/or to provide the Services or where it is required to store such personal data in order to comply with laws or for regulatory purposes.</p>
Nature and purpose of the processing	<p>Processing of personal data in order to perform our obligations and in particular to provide the Services.</p> <p>In respect of On Premise Software, we may, by agreement and to the extent necessary for performance of our Support Services extract Customer Data from your on premise system to our environment in order to investigate relevant faults.</p>
Type of personal data	<p>Personal data may include, names, addresses, email addresses, financial information and special categories of data relating to data subjects whose information is controlled or processed by you.</p>
Categories of data subjects	<p>Users and your employees, agents, contractors, suppliers and customers.</p>

Details of technical and organisational measures

The office is guarded by a Network Security Appliance that employs a firewall, antivirus, intrusion prevention system and protection against denial of service attacks to heavily analyse and restrict incoming traffic.

The Sage CRM system and Sage 200 Accounts Software used internally are protected by password policies that enforce a strict and secure password that is regularly changed.

TeamViewer is used for remote connections to your machines which uses a secure tunnel between host and client – you may use our ‘QuickSupport’ version which is obtained directly from the TeamViewer website and requires no installation.

Access to the internal accounting system is protected by the aforementioned password policies as well as 2-step verification.

Should we take a copy of your finance data and load on our network, it will only be used for testing and support purposes and is kept within an isolated virtual environment. It is then safely and securely deleted after an appropriate period of time. This also applies to any passwords you give us to access that data.