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Your use of Sage Accountant Cloud subscription is subject to our standard terms and conditions set out in herein (as applicable). If you don't accept these terms and conditions, then you should not install, access or use this product in any way.

## Sage Accountant Cloud Subscription Terms and Conditions

### 1. What this Agreement is about

1.1. These terms and conditions govern the Agreement between us in respect of your purchase of Sage Accountant Cloud which allows you to promote and facilitate the provision of Accounting (as defined in clause 1.3 of the Accounting Terms and Conditions of Use set out on our website at <http://uk.sageone.com/terms-conditions> (the "**Accounting Terms of Use**") as a solution for your clients through the Sage Accountant Cloud service ("**Sage Accountant Cloud**"). In this Agreement, where we say "**Payroll**", "**Cashbook**", "**Start**" and "**Accounting**", we mean the specific Accounting applications that you may promote and facilitate. Any references in this Agreement to "**Sage One Accounts Extra**" or "**Sage Business Cloud Accounting**" shall mean "Accounting" as described in and in accordance with the Accounting Terms of Use. If there is any difference between these terms and conditions and the Accounting Terms of Use or, where appropriate, your Sage Accountants Club/Network Membership Agreement, these terms and conditions will take precedence in relation to your participation in the programme and your use of the Sage Accountant Cloud.

### 1.2. Definitions and Interpretations

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control of the subject entity, where "**control**" is the ownership or control (whether directly or indirectly) of at least 50% of the voting rights in the entity, or otherwise the power to direct the management and policies of the entity. An entity is an Affiliate only so long as such control continues;

"**Agreement**" means these terms and conditions, its Appendices and any other Documentation or terms and conditions referred to within any of them.

"**Aggregate Data**" has the meaning set out in clause 16.4.

"**Customer Data**" shall mean the data, information or material provided, inputted or submitted by you or on your behalf into the Services, which may include data relating to your customers and/or employees.

"**Customer Personal Data**" has the meaning set out in clause 16.1.

"**Data Controller**" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

"**Data Processor**" a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller.

"**Data Protection Laws**" means all applicable EU laws and regulations governing the use or processing of Personal Data, including (where applicable) the European Union Directive 95/46/EC (until and including 24 May 2018), the GDPR (from and including 25 May 2018) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time.

"**Documentation**" means the user guides, specifications, instructions and manuals made available by Sage through the Services or otherwise on a website administered by Sage, as updated from time to time, but excluding marketing materials and sales publications

"**GDPR**" means EU General Data Protection Regulation 2016/679.

"**Feedback**" has the meaning set out in clause 9.6.

"**Force Majeure Event**" means an act of God (e.g. a natural disaster, accident or epidemic) or another event outside of a party's reasonable control (e.g. acts of war, terrorism, government authority or by another third party outside the party's control).

"**Intellectual Property Rights**" means rights recognised by any jurisdiction with respect to intellectual work product, such as patent rights (including priority rights), design rights, copyrights (including moral rights), mask work rights, trade secret rights, trademarks, service marks, know-how and domain name rights.

"**Personal Data**" means any information relating to an identified or identifiable natural person ("**Data Subject**"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"**Privacy Notice**" means our privacy notice posted on [www.sage.com](http://www.sage.com) (or such other URL as we may notify to you) and which may be amended by Sage from time to time.

"**Processing**" means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and "**Process**", "**Processed**" and "**Processes**" shall be construed accordingly.

"**Sage Mark**" means any name, trade mark, trade name, insignia, logo, symbol or slogan (whether registered or not) owned or used by us or any of our Affiliates now or in the future anywhere in the world; and

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**“Sage Materials”** means any marketing or promotional materials that we may at our sole discretion supply to you from time to time (if any) during the term of this Agreement to enable you to actively promote Accounting or your membership to the programme.

**“Service”** means the software as a service solution that you procure from us under this Agreement.

**“Supervisory Authority”** means an independent public authority which is established under applicable Member State law and which concerns itself with the Processing of Personal Data.

**“Third Party Provider”** means the provider of a Third-Party Service.

**“Third Party Service”** means the Web-based platform service provided by SFDC and any product(s) (e.g. software, cloud services, or forms), tool(s) (e.g. integration or development tools) or service(s) (e.g. implementation, configuration, development or accounting) provided by a party other than Sage, a Sage Affiliate or a Sage subcontractor.

**“User”** means an individual who is authorised to use the Service and has been supplied with a user identification and password by you (or by Sage at your request). Users may include your employees, consultants, contractors or agents.

**“we” “us” “our” “Sage”** means Sage (UK) Limited (company registration number 1045967, VAT number GB 555909605, registered office: North Park, Newcastle upon Tyne NE13 9AA, United Kingdom) if you subscribe to the programme in the United Kingdom or Sage Hibernia Limited trading as Sage Ireland (company registration number 300549, registered office: 1 Central Park, Leopardstown, Dublin 18) if you subscribe to the programme in the Republic of Ireland.

**“you” or “your”** means the person accepting this Agreement, provided that if such acceptance is on behalf of a company or other legal entity then: (i) the person represents that they have the authority to bind such entity and its Affiliates to the terms of this Agreement; and (ii) “you” and “your” shall refer to the entity and its Affiliates.

## 2. Who this Agreement is between

- 2.1. This Agreement is between: **you**, the person or organisation authorised to use Sage Accountant Cloud under and in accordance with these terms and conditions; and **us**.
- 2.2. By participating in the programme and/or using Sage Accountant Cloud you and we agree to be bound by and comply with the terms and conditions set out herein.

## 3. How you accept this Agreement, and when the Agreement between us starts

- 3.1. You accept these terms and conditions, and this Agreement between us starts from the earliest date you tick a box or click on a button (or something similar) when Sage Accountant Cloud asks you to confirm that you accept this Agreement.
- 3.2. Our Agreement will continue until terminated in accordance with clause 14.
- 3.3. If you don't accept this Agreement, you should contact us immediately and you should not promote or facilitate the usage of Accounting by your clients or otherwise hold yourself out as a member of the programme.

## 4. Usage Rights

- 4.1. Access to the Service. Subject to the rights and limitations set out in this Agreement and your payment of all applicable fees, Sage grants you a limited, non-exclusive, non-sublicensable, non-transferable (except as expressly permitted herein) right to access and use the Service: (i) solely for your internal business purposes; and (ii) for the scope of use set out in your Order.
- 4.2. Limitations. Except with Sage's prior written consent, you shall not access the Service if you provide, or intend to provide, any service or functionality which competes with the Service, or for any other benchmarking or competitive purposes.
- 4.3. Compatibility. You shall remain responsible for the Service being compatible with (where applicable) your web browser, network and internet connections, and/or equipment or device set-up and for any associated fees. The Services are provided over the internet via networks only part of which are within Sage's control. Our obligations herein apply only to networks and equipment within our control, and we are not responsible for any delay, loss, interception, or alteration of Customer Data on a network outside of our control.
- 4.4. Restrictions. You shall not: (i) rent, sell, resell or otherwise commercially exploit or make the Service available to any third party other than your Users [or Accountant], or include the Service as part of a facility management, timesharing or service bureau arrangement except as expressly authorised in the Agreement; (ii) attempt to reverse compile, disassemble, reverse engineer, copy, modify or make derivative works based upon the Service; (iii) remove any proprietary notices or labels from the Documentation; (iv) create internet links to or from, or frame or mirror any part of the Service; (v) use the Service, including through a Third-Party Service, for any purpose other than those for which it was designed and specifically shall not use it: (a) to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws or regulations; (b) to send or store material which violates the rights of a third party; (c) to send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (d) to interfere with or disrupt the integrity or performance of the Service or other data contained therein; or (e) for any other illegal or unlawful purposes, and Sage reserves the right, without liability or prejudice to its other rights, to disable access to any material or aspect of the Service, or the entire Service and/or the Third-Party Service in the event that you breach the provisions of this clause 4.4. In the event Sage suspends access to the Service, the parties agree to work together in good faith to resolve the issues causing the restriction/suspension of the Service.  
You shall not facilitate or aid a third party in any of the activities described in this clause 4.4

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**4.5** Your Account. You shall use the Service only in accordance with this Agreement and the Documentation, and shall notify Sage immediately of any known or reasonably suspected breach of the terms of this Agreement. You are responsible for: (i) the accuracy, quality and legality of Customer Data and the means by which you acquire Customer Data and input it into the Service; (ii) the confidentiality of User access credentials that are in your possession or control; (iii) the activity of your Users in the Service; and (iv) your Users' compliance with this Agreement. You must notify Sage immediately if you become aware, or reasonably suspect, that your account's security has been compromised. Sage has no liability for unauthorized use of your Users' access credentials unless it was a result of a breach of Sage's obligations under this Agreement.

## **5. Facilitation of Accounting for your clients**

**5.1.** Once you sign up to Sage Accountant Cloud you can either: (i) set up and administer Accounting accounts for your clients which will link to your own Sage Accountant Cloud account (or permit us to do this on your behalf whether as part of any multiple client import service (or otherwise) that we may offer from time to time; or (ii) link to your clients' own existing Accounting accounts, in each case, so that you can access reports, transfer files, help your clients to manage their own Accounting accounts and provide your own services to your clients as agreed between you and your individual clients.

**5.2.** Where you link to a client's existing Accounting account your client can revoke your access to its Accounting account at any time. Where your client is a Direct Billing Customer (as defined in clause 7.2 below), that client may revoke the link from their Accounting account to your Sage Accountant Cloud account and this will prevent your access to their Accounting account.

**5.3.** You must take all reasonable steps to ensure that your clients comply with the Accounting Terms of Use.

**5.4.** We reserve the right to access your Sage Accountant Cloud account at any time including without limitation for the purposes of enabling us to: establish your compliance with this Agreement; investigate and/or remedy any errors or other bugs within Sage Accountant Cloud, and to delink any and all of your clients from your Sage Accountant Cloud if you are in breach of this Agreement.

**5.5.** Where we set up Accounting accounts on your behalf pursuant to clause 5.1 above, you hereby give us consent (and warrant and represent that you are (and at all times shall be) duly and properly authorised to give such consent (including on behalf of your clients)) to permit us to process any and all of the Customer Personal Data you provide to us (including any Personal Data of your clients) in the performance of our obligations under this clause 5. You further warrant and represent that any data provided by you hereunder is accurate, complete and up-to-date and you will verify the same where asked to do so. We process personal data in accordance with our Privacy Notice.

## **6. Your obligations**

**6.1.** You will perform your obligations promptly, diligently and in accordance with the standard to be reasonably expected of an experienced, trained and appropriately qualified accountant (or equivalent) operating in your market; and comply with all rules, regulations and laws affecting your business relating to Accounting including those relating to e-commerce, data protection, direct marketing and anti-competitive practices.

*Sage Final Accounts, Sage Corporation Tax Online and Sage Personal Tax Online*

**6.2.** You can:

**6.2.1.** produce a set of balance sheets and profit and loss accounts for your clients in final form for submission to Companies House in the United Kingdom or the Companies Registration Office Ireland ("**Final Accounts**"); and / or

**6.2.2.** prepare and manage submission of CT 600 tax return forms (and such other tax return forms as we may notify you of from time to time) for your clients using our Sage Corporation Tax Online tool ("**Corporation Tax Returns**"); and / or

**6.2.3.** prepare and manage submission of SA100 personal tax self-assessment forms (and other such tax return forms as we may notify you of from time to time) for your clients using our Sage Personal Tax Online tool ("**Personal Tax Returns**").

**6.3.** When you produce Final Accounts, Corporation Tax Returns and Personal Tax Returns for your clients you will be charged (and you agree to pay) our then-current price for a twelve (12) month subscription calculated on a pro-rated basis for the first period of twelve (12) months (the "**12 Month Subscription Term**") at such price as we may specify on our website from time to time, with such price being payable upfront and in full upon the commencement of the 12 Month Subscription Term. We will use our reasonable endeavours to give you as much notice as reasonably possible of our prices upon expiry of your 12 Month Subscription Term.

**6.4.** You acknowledge and agree that we may change the prices we charge for your use of Final Accounts, Corporation Tax Returns or Personal Tax Returns at any time. We will use our reasonable endeavours to give you as much notice as is reasonably possible of any such changes.

*Bank Feed Service*

**6.5.** With effect from 22 April 2015 (or such other date as we may specify), your clients will be able to subscribe to the Accounting "Bank Feeds Service". "**Bank Feeds Service**" has the meaning given to it in the Appendix to the Accounting Terms of Use. The Bank Feeds Service is included as part of your subscription to Accounting or Accounting Start.

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6.6. You acknowledge that due to the variety and differing requirements of online banking security arrangements, you will procure that where your clients require the Bank Feeds Service they: (a) will ensure that their online banking facility is compatible with the Bank Feeds Service; (b) are solely responsible for ensuring that they sign up to and use the Bank Feeds Service in full compliance with the terms and conditions of their applicable online banking facility; (c) enter into such third party terms and conditions that we may provide to them during the sign up process for the Bank Feeds Service; and (d) do not disclose their internet banking credentials to you or any other third party which would render them in breach of their online banking facility. Sage shall not be liable for any losses damages, costs and expenses whatsoever that are suffered and/or incurred by you and/or your clients which arise out of or in connection with any breach or other failure to comply with this clause 6.6.

## 7. Price and payment method

7.1. You acknowledge that we are moving to a direct billing subscription model for our products and in order to facilitate this model, we are making some changes to the way we pay you for those clients for whom you introduce, set up (or have set up) and administer an Accounting account.

7.2. For each new client you introduce to and set up and administer an Accounting account through Sage Accountant Cloud, you may: (i) procure for that client to pay us directly (rather than pay you) in full for all applicable fees for that account, in accordance with such instructions as we may provide to you from time to time ("**Direct Billing Customers**"); or (ii) those new clients may pay you directly for their use of Accounting (in the same way as your existing customers pay you pursuant to clause 7.3 below). Where (ii) applies, your client will not be eligible for a free trial of Accounting. If you do not elect how your new client will pay, they will automatically be set up as a Direct Billing Customer and in these circumstances, your client will be entitled to receive a free trial if requested.

7.3. You will continue to invoice your existing clients for whom you have already set up and administer Accounting accounts via your Sage Accountant Cloud and you will continue to pay us in full for all applicable fees for those accounts until such time as we may advise you that those existing clients will pay us directly for their use of Accounting. We will pay you Commission (as defined in clause 7.6 below) for Direct Billing Customers as well as for your existing clients and your new clients who pay you directly for their use of Accounting (rather than paying us) pursuant to and in accordance with the terms and conditions of this clause 7 (even though this clause 7 refers to Direct Billing Customers) and such instructions as we may issue to you from time to time. If those clients pay us directly (rather than paying you), those clients will then become (and will be known as) Direct Billing Customers.

7.4. For a client who subscribes to more than one Accounting application, the same billing model must be adopted for that client's use of Accounting. By this we mean that your client would either: (a) pay you for their entire use of the Accounting applications and you would pay us for their use pursuant to clause 7.3; or (b) they would pay us for their entire use of the Accounting applications as a Direct Billing Customer.

7.5. You acknowledge and agree that your clients cannot use a different billing model to pay for different Accounting applications. However, you may have clients on different billing models with some clients paying you for their use of Accounting applications and your other clients paying us for their use of Accounting applications as a Direct Billing Customer.

### *Calculation and Payment of Commission*

7.6. For each Direct Billing Customer that you introduce (or have introduced in the case of an existing client (or will introduce pursuant to clause 7.2(ii) above) ) to Accounting and which are linked to your Sage Accountant Cloud account, we will pay you a commission which we will calculate as a percentage (such percentage to be notified to you in writing from time to time) of the Net Monthly Fee paid to us by the Direct Billing Customer for their use of Accounting ("**Commission**"). "**Net Monthly Fee**" means in relation to Accounting, the price actually charged by us to the Direct Billing Customer after any discounts or other deductions and less any VAT (as defined below) or other sales tax. Commission is not payable in respect of any use by a client of Accounting where that use is free of charge and we will give you 30 days' notice in writing of any changes to the percentage of Commission payable to you.

7.7. Any and all Commission due to you shall be accrued monthly but shall be paid to you quarterly in arrears in accordance with this clause 7 (unless we advise you of such other billing periods). We will advise you in writing of the quarterly periods which we will use to calculate the Commission payable to you for the Direct Billing Customers.

7.8. We will pay you Commission only in respect of cleared funds that we have received from the Direct Billing Customer for their use of Accounting (and only in respect of revenue we have been able to recognise in accordance with our accounting rules and standards). Payment will be made via electronic transfer to such bank account as you may notify to us in writing from time to time and payment shall be made within 15 days of the end of each quarter unless we notify you otherwise.

7.9. We may, at any time and without notice, set off any liability of yours (including, without limitation, any outstanding balances you may owe to us) from the Commission and whether that liability is present or future, liquidated or unliquidated, and whether or not it arises under this Agreement. Any exercise by us of our rights under this clause shall not limit or affect any other rights or remedies available to us under this Agreement or otherwise.

### *Restrictions around the Payment of Commission*

7.10. We will only pay you Commission for so long as a Direct Billing Customer: (i) remains an active client of yours; and (ii) that client continues to pay their subscription fee in full for their use of Accounting. By an "**active client of yours**" we mean those clients using Accounting whom you introduced to and are linked to your Sage Accountant Cloud account.

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We do not mean those clients who signed up directly to Accounting and then subsequently linked to your Sage Accountants Cloud account. Once a Direct Billing Customer is no longer an active client of yours and/or they are no longer paying (or have failed to pay) for their use of Accounting, you will no longer be entitled to receive Commission for that Direct Billing Customer.

- 7.11. If, during any quarter, a Direct Billing Customer fails to pay their subscription fee for their use of Accounting and/or their agreement with us to use Accounting is terminated, your entitlement to Commission will be calculated on a pro rata basis for that quarter (the “**final Commission payment**”). You will not be entitled to receive any further Commission for that Direct Billing Customer once you have received the final Commission payment and this will apply even where that customer subsequently recommences the payment of its subscription fee to use Accounting.

#### *Self-Billing and VAT*

- 7.12. Unless we advise you otherwise, if you are VAT registered you will only be entitled to receive Commission if you have entered into and maintain a valid self-billing agreement with us for VAT purposes. This is because we will pay you Commission against a self-billing VAT invoice which we will raise on your behalf. We will provide you with a self-billing agreement (including, without limitation, any renewals of that agreement) which you must sign and return to us in such form (and in accordance with such instructions) as we may provide you from time to time.
- 7.13. Where you are VAT registered (and unless we have advised you otherwise), you understand and agree that in order for us to calculate and pay you Commission during any quarter we must have a valid and binding self-billing agreement in place between us. This means that we will not be required to pay you any Commission which accrues during a period where we have no self-billing agreement in place.
- 7.14. If you are VAT registered, you will provide us with your VAT registration number and such other information as we may reasonably require in the performance of our obligations under this Agreement and you will advise us immediately in writing if there is any change to your VAT registration number or your VAT status.
- 7.15. If you are not VAT registered, we will pay you Commission at the end of each quarter in accordance with the terms and conditions of this Agreement. If, at any time, you become VAT registered you will notify us in writing within 7 days of making that registration and you will promptly enter into a self-billing agreement with us pursuant to clauses 7.10 and 7.13 above to enable us to pay you Commission.

#### *Payment Terms*

- 7.16. Unless otherwise agreed in writing by us, you will pay our fees and other prices and charges in advance and by monthly direct debit or within 30 days of the date of any invoice we issue in respect of such fees, prices and charges incurred during the previous month.
- 7.17. We may amend our prices and payment terms (including individual credit terms) from time to time in our absolute discretion and we will take reasonable steps to notify you in advance of any price increases or changes to credit terms.
- 7.18. All amounts payable under this Agreement will be:
- 7.18.1. paid in pounds sterling (where you subscribe to the Sage Accountants Cloud in the UK) or Euros (where you subscribe in the Republic of Ireland); and
  - 7.18.2. exclusive of value added tax (“**VAT**”) or similar sales tax, which if applicable and subject to receipt of a valid VAT invoice you shall pay, as well as all other duties, charges and taxes (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 7.19. While you understand that we have other rights and remedies, you agree that if any payment due to us is paid after the due date, we may charge you interest on a daily basis at the rate of 4% above the base rate of Lloyds Bank plc if you subscribe to the Sage Accountant Cloud in the UK (or The Bank of Ireland if you subscribe in the Republic of Ireland) from time to time in force, and from the due date until the date of actual payment. Interest shall accrue before as well as after judgment and in respect of any part payment. You agree to reimburse us for any costs (including our own and any third party costs) we incur in recovering any outstanding sums due to us from you.
- 7.20. All payments you make to us under this Agreement will be made in full without any set-off, restriction or condition and without any deduction or withholding, unless you are required by law to make any such deduction or withholding.
- 7.21. Without prejudice to any other right or remedy we may have, if you fail to make any payment in accordance with this Agreement or fail to perform any other obligation to us, we:
- 7.21.1. may at our option and upon written notice terminate this Agreement or suspend performance of our obligations under this Agreement until such time that you make payment or perform such obligation in full; and
  - 7.21.2. reserve the right to access your account and delink any and all of your clients from your Sage Accountant Cloud as set out in clause 5.4 and provide Accounting to these clients directly at our discretion. If we elect to take this action you will not be entitled to Commission for these clients from and including the date we delink them.
- 7.22. You agree to provide us with complete and accurate billing and contact information, and shall promptly notify Sage of any change to this information.
- 7.23. If funds are unavailable from your account on the due date for payment and/or any amount owing by you under this Agreement or any other agreement for our services is [10] or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and/or suspend your access to the Services for you until such amounts are paid in full. We will give you at least [5] days’ prior notice that your account is overdue before suspending the Service to you.

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## 8. Sage Marks and Sage Materials

- 8.1. You must not:
- 8.1.1. use or permit any third party to use any Sage Mark (as defined below) or any mark, words, logo, device or any other branding which is the same as, or similar to, or mimics any Sage Mark;
  - 8.1.2. use any Sage Mark for any business reason (other than in relation to your legitimate and permitted use of Accounting) or as part of your corporate or business name;
  - 8.1.3. use, create or register any trade mark which incorporates any Sage Mark or any similar mark, logo, words, device or any other branding; and/or
  - 8.1.4. register or use as a domain name any Sage Mark, or any mark, words, logo, device or any other branding which is the same as, similar to or mimics any Sage Mark, without our prior written consent.
- 8.2. If you do use or register or have registered any Sage Mark or any mark, words, logo, device or other branding as more particularly described in clause 8.1, you will immediately on our request and at your own cost:
- 8.2.1. stop doing so and, if applicable, remove that Sage Mark or similar branding from the relevant registration or use;
  - 8.2.2. transfer any registration incorporating any Sage Mark or similar branding to us.
- 8.3. You must only use Sage Materials in accordance with our written instructions and you must not modify Sage Materials or use them for any other purpose without our prior written consent.
- 8.4. You will immediately stop using Sage Materials (as defined below) upon our instruction and you will withdraw from circulation any such Sage Materials you have issued.

## 9. What are each of our rights and obligations relating to Sage's Intellectual Property Rights

- 9.1. You acknowledge that we or our licensors are the owners of the Sage Intellectual Property Rights (as defined below) and agree that except to the extent set out in this Agreement, you acquire no interest in or to any of the Sage Intellectual Property Rights.
- 9.2. Except to the extent permitted by law, you will not do anything nor allow anything to be done which will or may damage or affect the validity of the Sage Intellectual Property Rights, including (without limitation) breaching any terms and conditions of this Agreement or the Accounting Terms of Use or which arises out of or in connection with you use of, or holding yourself out as the owner of, the Sage Intellectual Property Rights.
- 9.3. You will immediately inform us in writing if you become aware of any actual or potential infringement or invalidity of any of the Sage Intellectual Property Rights. You will at our request and expense sign, execute and do all such deeds, documents, acts and things (including allowing your name to be used in any proceedings) as we may reasonably require with a view to restraining such infringement (or preventing such invalidity) and/or obtaining damages and/or otherwise protecting our or our licensors' rights.
- 9.4. You acknowledge that we are the owners of the goodwill in Accounting and agree that if any goodwill in Accounting is created or developed by your distribution of it in accordance with this Agreement, the goodwill in Accounting will arise solely for our benefit. Nothing in this clause prevents you from benefiting from the goodwill you create or develop in your own business.
- 9.5. For the purpose of these conditions, "**Sage Intellectual Property Rights**" means any and all Sage Marks, the Sage Materials and all vested contingent and future intellectual property rights in and to Accounting including, without limitation, goodwill, reputation, rights in confidential information, copyright, trade marks and design rights whether registered or unregistered, logos, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, patents, know how, trade secrets, inventions, get-up, database rights and (as applicable) any applications or registrations for the protection of these rights and renewals and extensions of them, existing in any part of the world, whether now known or created in the future.
- 9.6. You may, but are not required to, provide Sage or its Affiliates or subcontractors with ideas, suggestions, requests, recommendations or feedback about the Services ("Feedback"). If you do so, you grant Sage a non-exclusive, worldwide, perpetual, irrevocable license to use, exploit, reproduce, incorporate, distribute, disclose, and sublicense any Feedback for any purpose.
- 9.7. Ownership of Customer Data. All title and intellectual property rights in and to the Customer Data is owned by you, and you grant Sage a worldwide, royalty-free, non-exclusive license to host and use any Customer Data provided through your use of the Service to the extent necessary to provide the Service and for the purposes set out in section 17.4.

## 10. Our liability and responsibility to you if something goes wrong

- 10.1. Subject always to clauses 10.2, 10.3 and 10.4 below, our total liability to you arising under or in connection with this Agreement whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise will not exceed an amount equal to the total of:
- 10.1.1. the fees paid or payable by you to us for your annual programme or network membership in the 12 month period in which the claim arose; and
  - 10.1.2. where a claim relates to a client who pays you directly for their use of Accounting (such that they are not a Direct Billing Customer), the fees you have paid to us for your client's use of the relevant Accounting product during the 12 month period immediately preceding the date on which the claim arose (such relevant Accounting product being the product forming the subject matter of the claim); and/or

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- 10.1.3. where a claim relates to a Direct Billing Customer, the Commission we have paid to you for the relevant Accounting product for that Direct Billing Customer during the 12 month period immediately preceding the date on which the claim arose (such relevant Accounting product being the product forming the subject matter of the claim).
- 10.2. We will not be responsible for any of the following, even if we knew or should have known there was a possibility you could experience:
  - 10.2.1. loss of profits, revenues or contracts, lost savings, business interruption, lost funding, loss of goodwill or reputation, wasted expenditure or loss or corruption of data, in each case whether arising directly or indirectly and whether it is known, foreseen or foreseeable; and/or
  - 10.2.2. indirect, incidental, special, punitive or consequential loss or damage, whether it is known, foreseen or foreseeable.
- 10.3. Nothing in these conditions will exclude or limit your or our liability for:
  - 10.3.1. Fraud or fraudulent misrepresentation;
  - 10.3.2. death of or personal injury to any person as a result of our negligence; or
  - 10.3.3. any other matter which cannot be excluded or limited under applicable law.
- 10.4. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.5. Your and our responsibilities under this Agreement are reasonable because they reflect that:
  - 10.5.1. we cannot control how, and for what purposes, you or your clients use Accounting we have not developed Accounting and/or Sage Accountant Cloud specifically for you or your clients; and
  - 10.5.2. although we follow good industry practice, it is not economically possible for us to carry out all the tests necessary to make sure that Accounting and/or Sage Accountant Cloud is problem or error free.
- 10.6. Allocation of Risk. The parties agree that the allocation of risk in this Agreement is reflected in the level of fees payable under this Agreement.
- 10.7. Affiliate Claims. No party may circumvent the limitations of liability herein or receive multiple recovery under this Agreement by bringing claims on behalf of its Affiliates.
- 10.8. Claims against Sage. You agree that you shall only be entitled to bring a claim, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, against the Sage entity that is party to this Agreement in respect of any issues related to the Service.

## 11. Warranties

- 11.1. Authority. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 11.2. Sage Warranties. We warrant that: (i) the Service will perform materially in accordance with the Documentation under normal use and circumstances; and (ii) we will not materially decrease the overall functionality of the Service during a current subscription term.
- 11.3. Remedies. If you notify us in writing that the Service does not conform with any of the warranties in clause 11.2, we will use commercially reasonable efforts to correct any such non-conformance promptly. You will use commercially reasonable efforts to mitigate any loss, damage or liability you may incur as a result of such non-conformance. Subject to your right to terminate the Service in accordance with the provisions of this Agreement, this clause 11.2 constitutes your sole and exclusive remedy for any breach of the warranties set out in clause 11.2.
- 11.4. DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN "AS IS" BASIS AND WE DISCLAIM TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES, CONDITIONS OR GUARANTEES (I) OF MERCHANTABILITY OR SATISFACTORY QUALITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT AND (IV) ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF PRIOR DEALING OR COURSE OF PERFORMANCE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE DO NOT WARRANT THAT YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE, DOCUMENTATION AND/OR THE INFORMATION OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR PRODUCE PARTICULAR OUTCOMES OR RESULTS. WE ARE NOT RESPONSIBLE FOR ANY ISSUES WITH THE SERVICE THAT ARISE FROM CUSTOMER DATA, THIRD-PARTY SERVICES OR THIRD-PARTY PROVIDERS. YOU ACKNOWLEDGE THAT WE DO NOT PROVIDE ANY ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO YOU, USERS, OR ANY THIRD PARTY.

## 12. Indemnity

- 12.1. Subject to clause 12.4, Sage shall indemnify and hold you and your Affiliates harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that the Service infringes the Intellectual Property Rights of a third party. In no event shall Sage, its employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
  - (i) a modification of the Service by anyone other than Sage; or
  - (ii) your use of the Service in a manner contrary to the instructions given to you by Sage, including such instructions given in any Documentation; or
  - (iii) your use of the Service after notice of the alleged or actual infringement from Sage or any appropriate authority.

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- 12.2** If the Service infringes, or Sage reasonably believes it may infringe, third party rights, Sage may, at its own expense and sole discretion: (i) procure the right for you to continue use of such Services; (ii) modify such Service so that it becomes non-infringing; or (iii) if (i) or (ii) are not feasible, terminate the Agreement and refund you a pro-rata refund of any prepaid fees covering the remainder of the term after the effective date of termination.
- 12.3** Indemnification by you. Subject to clause 12.4, you shall indemnify and hold Sage, its Affiliates and its officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; or (ii) a claim alleging that your use of the Service in breach of this Agreement infringes the rights of, or has caused harm to, a third party.
- 12.4** Indemnification Procedure. In the event of a potential indemnity obligation under this clause 12, the indemnified party shall: (i) give the indemnifying party prompt written notice of the claim; (ii) give the indemnifying party sole control of the defence and settlement of the claim (provided that the indemnifying party may not settle or defend any claim unless it unconditionally releases the indemnified party of all liability and such settlement does not affect Sage's business or Service); and (iii) provide to the indemnifying party all reasonable assistance, at the indemnifying party's expense.
- 12.5** Exclusive Remedy. The indemnification obligations set forth above represent the sole and exclusive liability of the indemnifying party and the exclusive remedy of the indemnified party for any third-party claim described in the clause.
- 13. What is your responsibility to us if another person makes a claim against us relating to your obligations?**
- 13.1.** You will indemnify us for all third party claims which arise out of or in connection with:
- 13.1.1.** your promoting, distributing and/or otherwise exploiting Accounting;
- 13.1.2.** your supporting or providing any other service for Accounting; or
- 13.1.3.** any breach or other failure by you of this Agreement.
- 14. How this Agreement may be brought to an end and what happens on termination**
- 14.1.** Without prejudice to any other right or remedy which we may have, we may exercise our right of suspension under clause 7.19 or, at our discretion, end this Agreement immediately if we do not receive payment from you for any amounts you owe to us. Suspension of your access to your Sage Accountant Cloud account or the termination of this Agreement (as the case may be) will also suspend or terminate the Accounting account of each client which is linked to your Sage Accountant Cloud account, and you accept that we will not be liable for any such suspension or termination.
- 14.2.** You may end this Agreement at any time by telephoning our loyalty team whose contact details are available on our Website or by sending us an email to [sagebusinesscloudadministration@sage.com](mailto:sagebusinesscloudadministration@sage.com) and we will confirm to you the date that this Agreement will come to an end. If you end this Agreement pursuant to this clause 14.2, you will not be entitled to receive a refund for any fees you have paid in advance and you agree to pay all sums due to us under this Agreement which are due and payable up to and including the date of termination (and this will include, without limitation, payment by you of all fees due for your clients who have an Accounting account during the month of termination). Once this Agreement ends you will not be entitled to receive any further Commission but we will pay you any Commission which is properly due to you up to and including the date of termination of this Agreement. We will make this payment to you in accordance with clause 7 above.
- 14.3.** We may end this Agreement at any time upon 30 days' written notice and, in such circumstances, we will repay to you any sums you have paid to us in respect of any unexpired portion of your subscription period for your Sage Accountant Cloud (and for Final Accounts, Sage Corporation Tax Online and Personal Tax Returns (where applicable)) calculated from the date of termination.
- 14.4.** If you or we discover that the other has done something which is not allowed by this Agreement, or has not done something that must be done, the one making such discovery can give the other written notice that the matter must be put right within 30 days. If the matter is put right in that time, no further action will be taken. If it is not put right in that time, the person who made the discovery may end this Agreement upon giving the other notice in writing.
- 14.5.** This Agreement will automatically (i.e. without us having to tell you) and immediately end without refund if you become bankrupt (or something similar happens) or your business is unable to pay its debts, stops trading or becomes insolvent (or something similar happens), or if the other party suspends or ceases, or threatens to suspend or cease, to trade. In those circumstances, we will have no further obligation to you and any monies due from you will become immediately due and payable to us in full.
- 14.6.** Where we suspend or terminate your access to your Sage Accountant Cloud in accordance with this Agreement, we may at our discretion agree to reactivate your account subject to you paying to us a reactivation fee.
- 14.7.** On termination of this Agreement for any reason, (i) 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 termination shall not be affected or prejudiced; and (ii), each party shall, at the request of the other party, destroy all materials that may contain the other party's Confidential Information and/or (to the extent legally and technically practicable) erase the other party's Confidential Information from all computer and communication devices used by it. Notwithstanding the foregoing, each party may retain the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 14.8.** Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

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- 14.9.** Suspension for non-payment. If funds are unavailable from your account on the due date for payment and/or any amount owing by you under this Agreement or any other agreement for our services is 10 or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and/or suspend your access to the Services for you until such amounts are paid in full. We will give you at least 5 days' prior notice that your account is overdue before suspending services to you.
- 15. Anti-Bribery and Corruption**
- 15.1.** We do not tolerate bribery or corrupt practices and expect those we do business with to take the same stance. Accordingly you will:
- 15.1.1.** comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- 15.1.2.** have and maintain in place throughout the term of this Agreement your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- 15.1.3.** promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of this Agreement;
- 15.1.4.** immediately notify us if a foreign public official becomes an officer or employee of your business or acquires a direct or indirect interest (and you wanted that no foreign public official is an officer, employee or direct or indirect owner of your business at the date of this Agreement);
- 15.1.5.** on request certify to us in writing your compliance with this clause and provide such supporting evidence of compliance as we may reasonably request.
- 15.2.** Breach of this clause will be deemed a material breach of contract and will entitle us to terminate this Agreement immediately without notice or further obligation to you.
- 15.3.** For the purpose of this clause, the meaning of "**adequate procedures**" and "**foreign public official**" will be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 16. Data Protection**
- 16.1** Roles of the Parties. For the purposes of this Agreement, the parties agree that you are the Data Controller in respect of Personal Data contained within Customer Data ("**Customer Personal Data**") and as Data Controller, you have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 16.2** Customer's Processing of Personal Data. You warrant and represent that:
- 16.2.1** you will comply with and will ensure that your instructions for the Processing of Customer Personal Data will comply with the Data Protection Laws;
- 16.2.2** you are authorised pursuant to the Data Protection Laws to disclose any Customer Personal Data which you disclose or otherwise provide to us regarding persons other than yourself;
- 16.2.3** you will where necessary, and in accordance with the Data Protection Laws, obtain all necessary consents and rights and provide all necessary information and notices to Data Subjects in order for:
- 16.2.3.1** you to disclose the Customer Personal Data to us;
- 16.2.3.2** us to Process the Customer Personal Data for the purposes set out in this Agreement; and
- 16.2.3.3** us to disclose the Customer Personal Data to: (a) our agents, third-party service providers and other companies within the Sage group of companies; (b) law enforcement agencies; (c) any other person in order to meet any legal obligations on us, including statutory or regulatory reporting; and (d) any other person who has a legal right to require disclosure of the information, including where the recipients of the Customer Personal Data are outside the European Economic Area.
- 16.3** Sage's Processing of Personal Data. To the extent that Sage Processes any Customer Personal Data as Data Processor, the terms of Appendix A shall apply and the parties agree to comply with such terms; or, were, and to the extent we Process your Personal Data as a Data Controller in accordance with our Privacy Notice, we shall comply with all Data Protection Laws applicable to us as Data Controller.
- 16.4** Analytics. You agree that we may record, retain and use Customer Data generated and stored during your use of the Service (including Customer Personal Data, which we shall Process as Data Controller as set out in our Privacy Notice, on the basis of our legitimate business interests), in order to:
- 16.4.1** deliver advertising, marketing (including in-product messaging) or information to you which may be useful to you, based on your use of the Service;
- 16.4.2** carry out research and development to improve our, and our Affiliates', services, products and applications;
- 16.4.3** develop and provide new and existing functionality and services (including statistical analysis, benchmarking and forecasting services) to you and other Sage customers;
- 16.4.4** provide you with location based services (for example location relevant content) where we collect geo-location data to provide a relevant experience, provided that Sage shall only record, retain and use such Data on a pseudonymised basis, displayed at aggregated levels, which will not be linked back to you or to any living individual ("**Aggregate Data**"). Sage will be the owner of all

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right, title and interest in the Aggregate Data. If at any time you do not want us to use Customer Data in the manner described in this section 16, please contact us at the email address set out in the Privacy Notice.

**16.5** Access to Customer Data. You agree that Sage may, when necessary to maintain, upgrade, troubleshoot, and/or protect the integrity of the Service, access and/or download Customer Data on a limited basis and for the sole purpose of completing maintenance, upgrades, troubleshooting, and/or protecting the integrity of the Service.

**16.6** Third-Parties. Where we use third-parties to provide certain features or functionality within the Service, you grant to those third-parties a non-exclusive, worldwide, royalty-free licence to use your Customer Data on an anonymised, aggregated basis for their own purposes, including for disclosure, distribution, licensing or sale.

## **17. Third-Party Services**

**17.1** No Endorsement of Warranty. Sage may present to you, including on Sage websites, Third-Party Services that are offered by Third-Party Providers. Sage does not endorse, and does not make any representation, warranty or promise regarding such Third-Party Service or Third-Party Provider and shall have no liability whatsoever for any damage, liabilities or losses caused by any Third-Party Service or Third-Party Provider, regardless of whether it is described as "authorized," "certified", "recommended" or the like and regardless of whether the Third-Party Service is included in your Sage order. You should review applicable terms and policies, including privacy and data gathering practices, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with a Third-Party Provider or obtaining any Third-Party Service. Sage has no obligation to provide any support for Third-Party Services and does not guarantee the initial or continuing interoperability of the Services with any Third-Party Services. If a Third-Party Provider ceases to make the Third-Party Services available for interoperation with the Service features on reasonable terms, we may cease providing those Service features without entitling you to any refund, credit or other compensation.

**17.2** Data Sharing. If you obtain a Third-Party Service that requires access to or transfer of Customer Data, you acknowledge that any such access or transfer is between you and the Third-Party Provider pursuant to the Third-Party Provider's own privacy notices and policies, and that Sage is authorized to provide the Customer Data as requested by the Third-Party Service. Sage is not responsible for any modification, loss, damage or deletion of Customer Data by any Third-Party Service obtained by you.

## **18. Confidentiality**

**18.1.** Definition of Confidential Information. Subject to clause 18.2, "Confidential Information" means all information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms of this Agreement, the Customer Data, the Service, business and marketing plans, pricing and payment information, technology and technical information, product designs, and business processes.

**18.2.** Exceptions. Confidential Information excludes: (i) information that was known to the Receiving Party without a confidentiality restriction prior to its disclosure by the Disclosing Party; (ii) information that was or becomes publicly known through no wrongful act of the Receiving Party; (iii) information that was rightfully received from a third party authorized to make such disclosure without restriction; (iv) information that has been independently developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information; (v) information that was authorised for release (in writing) by the Disclosing Party; and (vi) Aggregate Data.

**18.3.** Confidentiality Obligations. The Receiving Party will use the same degree of care as it uses for its own confidential information of like nature, but no less than commercially reasonable care, to protect the Disclosing Party's Confidential Information from any use or disclosure not permitted by this Agreement or authorized by the Disclosing Party. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, Affiliates and service providers who need access to such Confidential Information in order to effect the intent of this Agreement, provided that they are bound by confidentiality obligations no less restrictive than those in the Agreement.

**18.4.** Disclosure required by Law. The Receiving Party may disclose Confidential Information to the extent required by court or administrative order or law, provided that the Receiving Party provides advance notice thereof (to the extent practicable) and reasonable assistance, at the Disclosing Party's cost, to enable the Disclosing Party to seek a protective order or otherwise prevent or limit such disclosure.

**18.5.** Injunctive Relief. A breach of this section 19 may cause irreparable damage, which money cannot satisfactorily remedy, and therefore, in addition to any other available remedies the Disclosing Party may seek injunctive relief for any threatened or actual breach of this section 19 without the need to prove damages or post a bond or other surety.

## **19. Availability and Support**

**19.1.** Availability. We will use reasonable commercial efforts to maintain availability of the Services 24 hours a day, 7 days per week, except for: (i) planned downtime (of which we shall give reasonable notice); or (ii) any unavailability caused by a Force Majeure Event.

**19.2.** Technical Support. We will use commercially reasonable efforts to provide support to assist you in your use of the Service in accordance with the Documentation

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- 19.3.** Professional Services. Sage may also provide other services, such as consulting, training or development services. Any such services or requirements are outside the scope of this Agreement and shall only be provided by Sage subject to the terms of a separate written agreement between the parties.
- 19.4.** Personnel. Except as otherwise specified in this Agreement, Sage shall remain responsible for the performance of our employees and agents and their compliance with our obligations under this Agreement.
- 20. Access Rights**
- 20.1.** Sage Accountant Cloud allows you to have access to your clients' Accounting accounts (including access to client data) as well as manage such access rights over your clients' Accounting accounts. You are responsible for ensuring that the level(s) of access that you assign to each of your client's Accounting accounts has been agreed between you and your client.
- 20.2.** For each client that you set up through Sage Accountant Cloud, you are responsible for:
- notifying them that you will have access to their Accounting account, that you are responsible for access rights over their Accounting account and that Sage has no control over such access rights;
  - agreeing with each client the level(s) of access rights that they permit you and your business colleagues (as applicable) to have over their Accounting account.
- 20.3.** You agree that you will only assign access rights over your clients' Accounting accounts strictly in accordance with that particular client's instructions.
- 20.4.** We shall not be liable for any losses damages, costs and expenses whatsoever that are suffered and/or incurred by you and/or your clients which arise out of or in connection with any breach or other failure to comply with this clause 20 relating to access rights.
- 20.5.** You will indemnify us and our affiliates from any and all third party claims caused by or arising from or in connection with your access rights to client accounts and/or any breach or other failure by you of the provisions within this clause 20.
- 21. General Provisions**
- 21.1.** Compliance with Laws. You shall comply with all applicable laws and/or regulations in relation to your use of the Services, including but not limited to applicable laws relation to anti-bribery, anti-corruption and tax evasion.
- 21.2.** Assignment. You may not assign any of your rights or obligations under this Agreement, whether in whole or in part, directly or indirectly, by operation of law, merger, acquisition or otherwise without Sage's prior written consent (not to be unreasonably withheld). Sage may assign this Agreement in its entirety without your consent to its Affiliates or in connection with a merger, acquisition, corporate reorganization or sale of substantially all of its assets.
- 21.3.** Third Party Rights. Except as expressly set out in this Agreement, a person who is not party to this Agreement will have no rights to enforce any terms of this Agreement.
- 21.4.** Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the use of the Services and supersedes all prior or contemporaneous agreements, negotiations and discussions (whether written or oral) between the parties regarding the subject matter herein. The parties acknowledge that in entering onto this Agreement they have not relied on and will have no rights or remedies in respect of any statement, representation, assurance or warranty other than as expressly set out in this Agreement. Nothing shall limit or exclude either party's liability for fraud.
- 21.5.** Severability. If any provision or part-provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable then such provision(s) shall be deleted, or shall be construed, as far as possible, to reflect the original intentions of the invalid, illegal or unenforceable provision(s) with all other provisions in this Agreement remaining in full force and effect.
- 21.6.** No Partnership or Agency. Each party is an independent contractor and neither party has any authority to act on behalf of the other. Neither party will represent itself as agent, servant, franchisee, joint venture or legal partner of the other. We are entering into this Agreement as principal and not as agent for any other Sage company. Subject to any permitted assignment under clause 21.2 the obligations owed by us under this Agreement shall be owed to you solely by us and the obligations owed by you under this Agreement shall be owed solely to us. You agree not to pledge our credit, receive any money or give any receipt on behalf of us or compromise any debt due to us, or incur any other liability or obligation, or make any promise or representation on behalf of us or claim to do any such thing.
- 21.7.** Waiver. No failure or delay by either party to exercise or enforce any of its rights under this Agreement will act as a waiver or continuing waiver of such rights. Such rights may only be waived in writing, signed by both parties.
- 21.8.** Force Majeure. Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent fulfillment or performance of any terms or provisions of the Agreement are delayed or prevented by a Force Majeure Event.
- 21.9.** The most recent version of this Agreement can be accessed via [www.sage.com](http://www.sage.com). From time to time, Sage may amend the terms of this Agreement in its sole discretion. Sage will notify you of any material changes by promptly sending an email or posting a notice in the Services. By continuing to access or use Services after Sage has provided you with such notice of a change, you are indicating that you agree to be bound by the modified terms. If the changes have a material adverse impact on and are not acceptable to you, then you must notify Sage within 30 days after receiving notice of the change. If Sage cannot accommodate your objection, then the prior terms shall remain in force until the expiration of your then current subscription period. Any renewed subscription will be governed by Sage's then current terms.

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- 21.10. Publicity. Subject to your prior written consent (not to be unreasonably withheld or delayed) Sage may display your name and logo on our website, or issue a press release, identifying you as a customer of Sage.
- 21.11. Governing law and jurisdiction. If you subscribe to the Sage Accountant Cloud in the United Kingdom, this Agreement is governed by the laws of England and you and we both agree that the courts of England will be the only courts that can decide on legal disputes or claims about this Agreement. If you subscribe to Sage Accountant Cloud in the Republic of Ireland, this Agreement is governed by the laws of Ireland and you and we both agree that the courts of Ireland will be the only courts that can decide on legal disputes or claims about this Agreement.
- 21.12. Notices. Except as otherwise specified in this Agreement, any formal notice required to be given under this Agreement will be in writing and will be sent by pre-paid mail or recorded delivery or by email to the party required to receive the notice at the address given for that party. Any notice will be deemed to have been duly received if sent by: (i) pre-paid mail, 48 hours after posting; or (ii) recorded delivery on the next business day; or (iii) email at 09:00. a.m. on the next business day after the email is sent, or earlier if the intended recipient has confirmed receipt (either specifically or by conduct).
- 21.13. If a court or similar body decides that any wording in this Agreement cannot be enforced, that decision will not affect the remainder of this Agreement, which will remain binding on both parties. However, if the wording that cannot be enforced could be enforced if part of it is deleted, we will both treat the relevant part of the wording as if it is deleted.
- 21.14. If you or we fail to, or delay in, exercising any rights under this Agreement, that will not mean that those rights cannot be exercised in the future.
- 21.15. This Agreement is personal to you and may not be assigned, subcontracted, licensed (including sub-licensed), charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent. As an example, this means that if you sell the assets of your business, you cannot automatically transfer this Agreement to the buyer.
- 21.16. The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use the Service in a U.S. embargoed country or in violation of any U.S. export law or regulation.

## **Appendix A – Data Protection**

### **1. Interpretation**

- 1.1. Where there is any inconsistency between the terms of this Appendix A and any other terms of this Agreement, the terms of this Appendix A shall take precedence.

### **2. Processing of Personal Data**

- 2.1. During the term of this Agreement we warrant and represent that we:
  - 2.1.1. shall comply with the Data Protection Laws applicable to us whilst any Personal Data is in our control;
  - 2.1.2. when acting in the capacity of a Data Processor, shall only Process Personal Data:
    - 2.1.2.1. as is necessary for the provision of the Services under this Agreement and the performance of our obligations under this Agreement; or
    - 2.1.2.2. otherwise on your documented instructions.

### **3. Our Obligations**

- 3.1. We shall:
  - 3.1.1. taking into account the nature of the Processing, assist you by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests from individuals for exercising Data Subjects' rights; and
  - 3.1.2. taking into account the nature of the Processing, and the information available to us, provide reasonable assistance to you in ensuring compliance with your obligations relating to:
    - 3.1.2.1. notifications to Supervisory Authorities;
    - 3.1.2.2. prior consultations with Supervisory Authorities;
    - 3.1.2.3. communication of any breach to Data Subjects; and
    - 3.1.2.4. privacy impact assessments.

### **4. Personnel**

- 4.1. We shall:
  - 4.1.1. take reasonable steps to ensure the reliability of any personnel who may have access to the Personal Data;
  - 4.1.2. ensure that access to the Personal Data is strictly limited to those individuals who need to know and/or access the Personal Data for the purposes of this Agreement; and
  - 4.1.3. ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 4.2. If so required by Data Protection Laws, Sage shall appoint a data protection officer and make details of the same publicly available.

### **5. Security and Audit**

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- 5.1. We shall implement and maintain appropriate technical and organisational security measures appropriate to the risks presented by the relevant Processing activity to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage or disclosure. Such measures include, without limitation, the security measures set out in clause 5.3 below.
- 5.2. Subject to any existing obligations of confidentiality owed to other parties, we shall make available to you all information reasonably necessary to demonstrate compliance with the obligations set out in this Appendix A, which may include a summary of any available third party security audit report, or shall, at your sole cost and expense (including, for the avoidance of doubt any expenses reasonably incurred by us), allow for and contribute to independent audits, including inspections, conducted by a suitably-qualified third party auditor mandated by you and approved by us.
- 5.3. Sage operates, maintains and enforces an information security management programme ("**Security Program**") which is consistent with recognised industry best practice. The Security Program contains appropriate administrative, physical, technical and organisational safeguards, policies and controls in the following areas:
- information security policies;
  - organization of information security;
  - human resources security;
  - asset management;
  - access control;
  - cryptography;
  - physical and environmental security;
  - operations security;
  - communications security;
  - system acquisition, development and maintenance;
  - supplier relationships;
  - information security incident management;
  - information security aspects of business continuity management;
  - legislative, regulatory and contractual compliance.
- 6. Data Breach**
- 6.1. We shall notify you without undue delay if we become aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data arising from any act or omission of Sage or its sub-processors, acts or omissions.
- 7 Transfer of Personal Data outside the EEA**
- 7.1. You expressly agree that we may transfer Personal Data within the Sage group of companies on the terms of Sage's Master Data Processing and Transfer Agreements, which incorporate the European Commission's standard contractual clauses.
- 7.2. You acknowledge that the provision of the Services may require the Processing of Personal Data by sub-processors in countries outside the EEA. We shall not transfer Personal Data outside the EEA to a sub-processor where such transfer is not subject to: (a) an adequacy decision (in accordance with Article 45 of the GDPR); or (b) appropriate safeguards (in accordance with Article 46 of the GDPR); or (c) binding corporate rules (in accordance with Article 47 of the GDPR), without your prior written consent.
- 8 Return and deletion**
- 8.1. At your option, we shall delete or return all Personal Data to you at the end of the provision of the Services and delete all existing copies of Personal Data unless we are under a legal obligation to require storage of that data or we have another legitimate business reason for doing so.
- 9 Use of Sub-Processors**
- 9.1. You agree that we have general authority to engage third parties, partners, agents or service providers, including our Affiliates, to Process Personal Data on your behalf in order to provide the applications, products, services and information you have requested or which we believe is of interest to you ("**Approved Sub-Processors**"). We shall not engage a sub-processor to carry out specific Processing activities which fall outside the general authority granted above without your prior specific written authorisation and, where such other sub-processor is so engaged, we shall ensure that the same obligations set out in this Appendix A shall be imposed on that sub-processor.
- 9.2. We shall be liable for the acts and omissions of our Approved Sub-Processors to the same extent we would be liable if performing the services of each Approved Sub-Processor directly under the terms of this Agreement.

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## Appendix B – SFDC Service

The following terms and conditions also apply to the Sage Accountant Cloud Service.

In relation to those services provided to you under this Agreement by Salesforce:

“**AppExchange**” means the online directory of on-demand applications that work with the SFDC Service, located at <http://www.appexchange.com> or at any successor websites.

“**Platform**” means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller’s provision of the Reseller Application to You.

“**Reseller**” means, if you are domiciled in (i) Europe, Middle East, Africa, Asia or Australia, **Sage Global Services Limited** a company incorporated in England (company registration number 09506951) whose registered office is at North Park, Newcastle upon Tyne, NE13 9AA; and (ii) if you are domiciled in North, Central or South America, Canada or the Caribbean, **Sage Global Services US, Inc.**, a Delaware corporation.

“**Reseller Application**” means Sage Business Cloud Accounting.

“**SFDC Service**” means the online, Web-based service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding Third-Party Applications. For purposes of this SFDC Service Agreement, the SFDC Service does not include the Platform.

“**SFDC**” means salesforce.com EMEA Limited.

“**Third-Party Applications**” means online, Web-based applications and offline software products that are provided by third parties and are identified as third-party applications including but not limited to those listed on the AppExchange and the Reseller Application.

“**Users**” means Your employees, representatives, consultants, contractors, agents and third parties with whom You conduct business who are authorized to use the Platform subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by SFDC or Reseller at Your request).

“**You**” and “**Your**” means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.

“**Customer Data**” means all electronic data or information submitted by You as and to the extent it resides in the Platform or SFDC Service.

### 1. Use of Platform.

- (a) Each User subscription to the Reseller Application shall entitle one User to use the Platform via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Platform). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service generally or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services other than those included in the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit [www.salesforce.com](http://www.salesforce.com) to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any Platform or SFDC Service functionality within it that is in excess of the functionality described in the Reseller Application’s user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access or use such functionality, and You agree that Your use of such functionality, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.
- (b) If Your subscription to use the Platform hereunder includes Salesforce Mobile, You understand that prior to purchasing Salesforce Mobile, You should refer to the Mobile Device list located at <http://www.salesforce.com/mobile/devices/> for information on mobile devices that are supported by SFDC. You agree that SFDC will not provide any refunds, credits or other compensation or remedies in connection with Your purchase of Salesforce Mobile for any mobile devices that are not supported by SFDC. Third party mobile device, operating system and network connectivity providers may, at any time, cease distribution of, interrupt, deinstall and/or prevent use of Salesforce Mobile clients on supported mobile devices without entitling You to any refund, credit or other compensation or remedies.
- (c) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.

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- (d) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the Content of all Customer Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or SFDC promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform.
- (e) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.
- (f) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any Content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of Third-Party Applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform and/or the SFDC Service such as by exchanging data with the Platform and/or the SFDC Service or by offering additional functionality within the user interface of the Platform and/or the SFDC Service through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.
3. **Integration with Third-Party Applications.** If You install or enable Third-Party Applications for use with the Platform or SFDC Service, You acknowledge that SFDC may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third Party Applications with the Platform or SFDC Service. SFDC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers. In addition, the Platform and SFDC Service may contain features designed to interoperate with Third-Party Applications (e.g., Google, Facebook or Twitter applications). To use such features, You may be required to obtain access to such Third-Party Applications from their providers. If the provider of any such Third-Party Application ceases to make the Third-Party Application available for interoperation with the corresponding Platform or SFDC Service features on reasonable terms, SFDC may cease providing such Platform or SFDC Service features without entitling You to any refund, credit, or other compensation.
4. **Access by Reseller.** To the extent Reseller serves as the administrator of the Reseller Application for You, You acknowledge that your use of the Reseller Application may be monitored by Reseller and Reseller may access Customer Data submitted to the SFDC Service or Reseller Application. By agreeing to this SFDC Service Agreement, you are consenting to such monitoring and access by Reseller.
5. **Audit by SFDC.** SFDC may audit use of this subscription through the SFDC Service and provide the results of such audit to Reseller. Should any audit reveal any unauthorized use of this subscription, You agree to pay to Reseller within fourteen (14) days of Reseller's notice to You, the difference between the price charged by Reseller to You for the use of this subscription and the subscriptions showing unauthorized use at the Reseller's then-current list price for all of the subscriptions showing unauthorized use by You, beginning from the date of the first violation through to the end of the then current subscription term.

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6. **Processing of Customer Data.** SFDC's processing of Customer Data is limited to the extent, and in such a manner as is necessary, for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application and shall not include processing Customer Data for any other purpose without Your or Reseller's written instruction as appropriate. For clarity, the following processing is deemed an instruction by Reseller and/or You: (a) processing necessary for the performance of SFDC's obligations under its agreement with Reseller with regard to provisioning the Platform in connection with the Reseller Application; and (b) processing initiated by Your Users in their use of the Reseller Application.
7. **Return of Customer Data.** You have thirty (30) days from the date of termination your Reseller Application subscription term in which to request a copy of Customer Data, which will be made available to You in a .csv format. Any modifications to such Customer Data made by the Reseller Application outside of the Platform (if any) will not be captured in Customer Data as returned and the return of any such modified data shall be the responsibility of Reseller.
8. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.
9. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
10. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
11. **Suspension and Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Shared org") You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.
12. **Subscriptions Non-Cancelable.** Subscriptions for the Platform are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
13. **No Warranty.** SFDC MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SFDC DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
14. **No Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, COST OF PROCUREMENT OF REPLACEMENT GOODS OR SERVICES, LOST BUSINESS, LOSS OF USE, LOSS OF OR CORRUPTION OF DATA, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. **Further Contact.** SFDC may contact You regarding new Platform and SFDC Service features and offerings.

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16. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.