

# Enterprise Management Subscription Agreement (Last Updated: June 2018)



**IMPORTANT NOTICE! YOUR SUBSCRIPTION TO THE SERVICE IS SUBJECT TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT. THEREFORE, PLEASE SCROLL THROUGH AND READ ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT CAREFULLY BEFORE CONCLUDING THE ACTIVATION PROCESS. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND SAGE FOR YOUR SUBSCRIPTION TO THE SERVICE.**

**IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH COMPANY OR ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY YOU MUST NOT ACCEPT THESE TERMS AND CONDITIONS OR OTHERWISE ACCESS OR USE THE SERVICE.**

**YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDING ANY TERMS AND CONDITIONS IMPOSED BY REQUIRED THIRD PARTY SERVICE PROVIDERS, BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORIZING A THIRD PARTY TO DO ONE OR MORE OF THE FOLLOWING FOR YOU: (1) CLICKING "I AGREE" OR A SIMILAR AFFIRMATION AS APPLICABLE WHICH APPEARS DURING THE ACTIVATION OF YOUR SUBSCRIPTION, OR (2) ACCESSING OR USING THE SERVICE, OR (3) SIGNING A COPY OF THIS AGREEMENT. SAGE WILL NOTIFY YOU OF SUCH THIRD-PARTY SERVICE PROVIDER TERMS AND CONDITIONS BY SENDING AN EMAIL TO YOUR USER ADDRESS OR BY PUBLISHING A NOTICE ON ITS WEBSITE OR BY OTHERWISE DIRECTING YOU TO THE RELEVANT THIRD-PARTY TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT INCLUDING ANY TERMS AND CONDITIONS IMPOSED BY THIRD PARTY SERVICE PROVIDERS, EACH IN THEIR ENTIRETY AND WITHOUT MODIFICATION OR ADDITION (UNLESS AGREED OTHERWISE IN WRITING BY SAGE), THEN YOU SHOULD CONTACT SAGE OR THE RESELLER YOU PURCHASED YOUR SUBSCRIPTION FROM AND YOU MUST NOT ACCESS OR USE THE SERVICE IN ANY WAY.**

## **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1** "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.
- 1.2** "Agreement" means these terms and conditions, the Exhibits, your Order and any other documentation or terms and conditions referred to within any of them.
- 1.3** "API" means an application programming interface.
- 1.4** "App" means application software designed to run on a mobile Device.
- 1.5** "Aggregate Data" has the meaning set out in **section 12.6**.
- 1.6** "Commencement Date" means the earliest date Sage either accepts your order for your Subscription or you do anything consistent with accepting this Agreement such as Using the Service, signing a copy of this Agreement or ticking a box or clicking on a button (or something similar) when you are asked to confirm that you accept this Agreement during the sign up to the Service unless Sage agrees otherwise with you.
- 1.7** "Content" means images, text, software, music, sound, photographs, video, graphics, applets, Documentation, screen shots, displays, graphical user interfaces and software incorporated into the Service and all copyright, trade secret, patent and patent applications, trademark and other intellectual property rights in and to the Service, including, but not limited to, object code, the underlying source code, algorithms, formulae, data structures, scripts, application programming interfaces and protocols, all inventions (whether patentable or not), know-how, ideas, discoveries, compositions, products, schematics, databases, drawings, designs, samples, models, processes, procedures, data, information, manuals, notes, and any item marked "confidential" or "proprietary".

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- 1.8 “**Customer Data**” shall mean the data, information or material provided, inputted or submitted by you or on your behalf into the Service including Your Content, which may include data relating to your customers and/or employees.
- 1.9 “**Customer Personal Data**” has the meaning set out in **section 12.2**.
- 1.10 “**Customer Support**” means assistance Sage or your Reseller (as the case may be) provides or makes available to you on-line or by phone, email, chat or other means in accordance with the relevant Documentation provided by the Sage entity from which you purchased your Subscription.
- 1.11 “**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.
- 1.12 “**Data Processor**” a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller.
- 1.13 “**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.
- 1.14 “**Device**” means any device that meets Sage’s system requirements that you use to access any part of your Subscription.
- 1.15 “**Documentation**” means the user guides, specifications, instructions and manuals made available by Sage through the Service or otherwise on a website administered by Sage as updated from time to time but excluding marketing materials and sales publications.
- 1.16 “**Exhibits**” means the exhibits to this Agreement.
- 1.17 “**Feedback**” has the meaning set out in **section 6.3**
- 1.18 “**Force Majeure Event**” means an act of God (eg. a natural disaster, accident or epidemic) or another event outside of a party’s reasonable control (eg. acts of war, terrorism, government authority or by another third party outside the party’s control).
- 1.19 “**GDPR**” means EU General Data Protection Regulation 2016/679.
- 1.20 “**Intellectual Property Rights**” means rights recognized 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.
- 1.21 “**Maintenance**” means updates, upgrades, enhanced and new functionality, patches and fixes for the Service.
- 1.22 “**On-Premise Software**” means software that you may use on your on-premise computers or other Device(s) or network to use with the Service.
- 1.23 “**Order**” means the document evidencing your initial Subscription Term for the Service in written form specifying among other things, the number of Users, type of Users, the applicable Subscription Fees, the Subscription Period and other charges as agreed between you and Sage and any subsequent Order in written form evidencing some or all of the same.

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- 1.24 “**party**” means either you or Sage as the context requires and “**parties**” means you and Sage together;
- 1.25 “**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.
- 1.26 “**Privacy Notice**” means Sage’s privacy notice posted on [www.sage.com](http://www.sage.com) (or such other URL as Sage may notify to you) and which may be amended by Sage from time to time.
- 1.27 “**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, organization, 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.
- 1.28 “**Renewal Term**” means each successive 12-month period (unless a shorter or longer period is agreed with Sage) of your Subscription Term.
- 1.29 “**Reseller**” means an independent third party authorized or certified by Sage to act as a partner or distributor of the Service through Sage’s various authorised partner or other programmes.
- 1.30 “**Sage**” means the Sage Group plc entity with which you have Subscribed to the Service as indicated in Exhibit B.
- 1.31 “**Service**” means the provision of Enterprise Management including related Maintenance and Customer Support that Sage or your Reseller (as the case may be) procure from us under this Agreement.
- 1.32 “**Subscription**” means your access to and Use of the Service in a cloud or wireless environment together with Use of any Supplemental Services and Third-Party Services that Sage makes available to you as part of this Agreement and “**Subscribe**” or “**Subscribed**” shall be construed accordingly.
- 1.33 “**Subscription Fee(s)**” means the purchase price owed to the Sage Group plc entity with which you Subscribed to the Service for access to the various components of your Subscription for the Subscription Term whether paid directly by you to Sage or via a Reseller.
- 1.34 “**Subscription Term**” means an initial period of 12 months (unless a shorter or longer period is agreed with Sage) and each successive Renewal Term for which you have paid a Subscription Fee.
- 1.35 “**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.
- 1.36 “**Supplemental Services**” means, if available, optional software or services you may elect to include in your Subscription.
- 1.37 “**Supplemental Terms**” means additional terms and restrictions provided to you by the Sage Group plc entity with which you Subscribed to the Service (either in printed or electronic form including by reference to any URL which Sage may notify to you from time to time) that are specific to your Subscription or Third-Party Services.
- 1.38 “**Third-Party Provider**” means a provider of a Third-Party Service.
- 1.39 “**Third-Party Services**” means any product(s) (eg. software, cloud services or forms), tool(s) (eg. integration or development tools) or service(s) (eg. implementation configuration, development or accounting) provided by a party other than Sage, a Sage Affiliate or a Sage subcontractor.

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- 1.40 **"Use"** means to activate the Subscription, execute the Service and use Customer Support, provided that: (a) you access the Subscription only from your Devices; and (b) you execute the functionality of the Service during the Subscription Term (i) for its intended purpose solely in connection with the management of the business that you and where applicable your Affiliates conduct, and (ii) solely to the extent of any and all applicable limitations (whether as to the number or types of uses or Supplemental Services you purchase) set out in this Agreement.
- 1.41 **"User(s)"** means an individual who is authorized to use the Service and has been supplied with a user identification and password by you (or by Sage at your request).
- 1.42 **"you"** and **"your"** means or refers to the organization or person, including such organization's or person's Affiliates, that Sage has registered to Use the Service.
- 1.43 **Your Content** means the data and other information that you upload to or process through the Service.
- 1.44 In this Agreement: (a) the headings are for convenience only and shall not affect its construction or interpretation; (b) **"including"** and **"includes"** and similar expressions shall, if the context requires, be interpreted as illustrative, not exhaustive; (c) words of a technical nature shall be construed in accordance with the relevant general usage in the computer software industry, (d) references to a person include an individual, a body corporate and an unincorporated association of persons; and (e) use of the singular shall be treated as including the plural and vice versa.

## 2. USAGE RIGHTS AND RESTRICTIONS

- 2.1 **Access to the Service.** Subject to the rights and limitations set out in this Agreement and your payment of all applicable Subscription 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 as set out in your Order.
- 2.2 **Limitations.** Except with Sage's prior written consent, you shall not access the Service or Content if you provide, or intend to provide, any service or functionality which competes with the Service, or for any other benchmarking or competitive purposes.
- 2.3 **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. Sage's obligations herein apply only to network and equipment within its control and Sage is not responsible for any delay, loss, interception, or alteration of Customer Data on a network outside of its control.
- 2.4 **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.
- 2.5 **Affiliate Use.** You may Use the Subscription and Service to process the data of an Affiliate only if:
  - 2.5.1 your aggregate Use of the Service is limited to a single dataset unless you have paid the relevant Subscription Fees for your Affiliates to access and Use the Service in which case your Affiliates may access and Use the Service in accordance with this Agreement;

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- 2.5.2 You understand and agree that where any Affiliate accesses and Uses the Service, any act or omission your Affiliates shall be deemed to be your act or omission and that you shall have in place appropriate measures including, but not limited to, organizational and technical measures to ensure that your Affiliates are aware of and comply with the terms of this Agreement as if they were a party to it. If you become aware of any breach of the terms of this Agreement by your Affiliates, you must notify Sage immediately in writing of the breach and you must, at your own cost, take any corrective action as directed by Sage.
- 2.5.3 you maintain an accurate list of Affiliates on file with Sage;
- 2.5.4 you promptly notify Sage if any company is no longer an Affiliate, in which case such Affiliate shall automatically lose any rights of Use relating to the Service.

## 2.6 Third Party Services, App, APIs and On-Premise Software

- 2.6.1 **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.
- 2.6.2 **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.
- 2.6.3 The Service is hosted on Amazon's AWS platform, an Internet-scale cloud computing and services platform hosted in Amazon data centers. Your use of the Service is also subject to the following Amazon terms, conditions and policies: (i) AWS Privacy Notice Statement: <http://aws.amazon.com/privacy>; (ii) AWS Service terms: <http://aws.amazon.com/service/terms>; and (iii) AWS Acceptable Use Policy: <http://aws.amazon.com/aup/>. Neither you, nor anyone accessing the Service, may use AWS in any way prohibited by the AWS Acceptable Use Policy.
- 2.6.4 In the event you use On-Premise Software that integrates with the Service, your use of such On-Premise Software is subject to the terms and conditions of the relevant end user license agreement, subscription agreement, or other agreement applicable to such On-Premise Software. The Sage Group plc entity with which you Subscribed to the Service may require you to maintain a current Sage Business Care Plan for your On-Premise Software in order to subscribe for and continue use of the Service. ***In such circumstances, failure to maintain a current Maintenance plan may result in the suspension or termination of your Subscription by Sage.***
- 2.6.5 **Using a Sage application together with the Service.** Sage may make available to you an App which will allow you to access the Service. Your access to and use of the App is subject to the terms of this Agreement and any additional terms and conditions governing the use of the App, in addition to this Agreement. Where there is a conflict between this Agreement and any additional terms accompanying the App, those additional terms shall prevail in respect of the conflicting subject matter.

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**2.6.6 API.** If the Service offers integration capabilities via an API, your use of the API may be subject to additional terms and conditions, or Sage's specific policies. You may not access or use the API in any way that could cause damage to Sage or the Services, or in contravention of any applicable laws.

## **2.7 Restrictions.**

**2.7.1** You are only authorized to access and Use the functionality of the Service through (i) your private Internet or extranet using an Internet connection you provide or (ii) a wireless communication network you connect to, on Devices you provide.

**2.7.2** You may not install any components of the Service on your Devices unless Sage provides express instructions for you to do so.

**2.7.3** You shall not:(i) rent, sell, resell or otherwise commercially exploit or make the Service or Content available to any third party other than your Users, or include the Service as part of a facility management, timesharing or service bureau arrangement except as expressly authorized in this Agreement; (ii) attempt to reverse compile, disassemble, reverse engineer, copy, modify or make derivative works based upon the Service or Content; (iii) remove any proprietary notices or labels from the Documentation or Content; (iv) create internet links to or from, or frame or mirror any part of the Service or Content; (v) use the Service or Content, 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) provide Sage with fraudulent information; (c) to send or store material which violates the rights of a third party; (d) to send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) to interfere with or disrupt the integrity or performance of the Service or other data contained therein or threaten to do the same; (f) make or attempt to make a local non-cache copy of any part of the Service; or (g) 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 **section 2.7.3**. 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 **section 2.7.3**.

It is impossible to provide an exhaustive list of exactly what constitutes acceptable and unacceptable Use of your Subscription. In general, Sage will not tolerate any use which damages or is likely to damage Sage's business or reputation, the availability or integrity of the Service or which causes Sage or threatens to cause Sage to incur any legal, tax or regulatory liability.

**2.7.4** Sage may charge you for any costs it incurs in connection with your breach of this Agreement, including costs incurred to enforce your compliance. Sage cannot monitor, has no control over, and is not responsible for your internet connection, network, wireless connection, bandwidth, the content of your Device(s) and/or any other equipment you utilize. Sage reserves the right to restrict, change, suspend, or terminate your Subscription by any means if your access, Use, or connection to the Service impairs or adversely affects Sage's operations or the Service, including Use of the Service by others.

**2.7.5** You must not use, or try to use, your Subscription and the Service in a way which Sage has not specifically allowed. For example, you must not try to make the Subscription or Service work in a particular way if it does not usually work in that way.

**2.7.7** Sage will use reasonable commercial efforts to ensure that the Service will be accessible to connection from the Internet, however, you understand that the Service may be interrupted by routine maintenance.

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Sage will use its commercially reasonable efforts to minimise such interruption and to schedule such maintenance at non-peak hours.

**2.7.8** Sage may suspend access to the Service without telling you and without liability, but wherever practicable Sage will give you reasonable prior notice:

**2.7.8.1** if there is an attack on the servers of Sage's hosting provider or other event for which Sage reasonably believes the suspension of the Service is necessary to protect you, other Sage customers, Sage or our third-party hosting provider;

**2.7.8.2** if required by law or regulation or as compelled by a law enforcement or government authority.

**2.7.9** Any rights to Use the Service not expressly licensed to you in this Agreement are strictly prohibited. All rights not expressly set out in this Agreement are reserved by Sage.

## 3. AVAILABILITY, CUSTOMER SUPPORT AND MAINTENANCE

**3.1 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.

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

**3.3 Auto updates.** Your Subscription may contain auto update technology, a feature used to provide Maintenance as part of your Subscription. This feature cannot be disabled. This feature will: (a) connect to Sage or service provider computer systems over the Internet; (b) use Internet protocols to recover standard computer information in order to determine whether Maintenance is required; and (c) automatically download and install, or prompt you to download and/or install, current Maintenance. By Using the Service initially, you consent to the transmission of standard computer information and the automatic downloading and installation of Maintenance.

**3.4 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.

**3.5 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.

## 4. SUBSCRIPTION TERM

**4.1** You may Subscribe to the Service for the Subscription Term. Your Subscription Term will normally be stated on your invoice but may also be communicated to you in another way.

**4.2** PROVIDED YOU PAY THE REQUIRED SUBSCRIPTION FEES IN ACCORDANCE WITH THIS AGREEMENT YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW FOR SUBSEQUENT RENEWAL TERMS EQUAL TO THE EXPIRING SUBSCRIPTION TERM (UNLESS AGREED OTHERWISE WITH SAGE) IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND WILL CONTINUE UNTIL ONE OF THE FOLLOWING EVENTS OCCUR: (A) YOU TERMINATE YOUR SUBSCRIPTION IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT; (B) SAGE TERMINATES YOUR SUBSCRIPTION IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT; OR (C) THIS AGREEMENT TERMINATES IN ACCORDANCE WITH ITS TERMS.

**4.3** If at any time during your Subscription Term you want to increase the number of your Users Subscribing to the Service or your access to additional components of the Service, you must pay the applicable Subscription Fee for each additional User and/or access to the additional Service component and your Subscription Fee will be pro-rated from the date access to the additional Service components is made available to you and/or the additional

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Users are added to your Subscription until the commencement of your next Renewal Term. If you wish to decrease the number of Users Subscribing to the Service or reduce your access to the various Service components you may do so from the commencement of your next Renewal Term when your Subscription Fees will be calculated for your next Renewal Term to take account of the reduced number of Users accessing the Service and/or your reduced access to the Service components.

## 5. SUBSCRIPTION FEES AND PAYMENT

- 5.1** You agree to provide Sage with complete and accurate billing and contact information and shall promptly notify Sage of any change to this information. As part of the Subscription registration process, Sage will agree a payment method and payment frequency with you and if Sage accepts payment from you by credit, debit or other bankcard, the expiration date of such credit, debit or other bankcard. You agree to accept invoices from Sage by email and to provide Sage with an email address to which invoices can be sent. You also agree to have in place the relevant procedures to ensure you monitor and check the email address for invoices that may be sent to you in connection with this Agreement.
- 5.2** You authorize Sage to collect your payment of Subscription Fees in advance in the applicable currency, using the payment method, payment frequency and payment information you provide and that Sage accepts. You must pay the Subscription Fees and any other charges arising under this Agreement within 30 days of the date on Sage's invoice, or as otherwise agreed with Sage.
- 5.3** All Subscription Fees and any other fees due under this Agreement are exclusive of applicable taxes, levies or duties imposed by taxing authorities and you shall be responsible for the payment of all such taxes, levies or duties in addition to the fees, excluding taxes on Sage's net income.
- 5.4** If any of the Subscription Fees and any other fees are not received by Sage by the due date, then without limiting our rights or remedies: (i) those fees may accrue late interest at the rate of 1.25% of the outstanding balance per month, or up to the maximum rate permitted by law, whichever is lower; and/or (ii) we may apply shorter payment terms to any future subscription renewals.
- 5.5** Where you have agreed to pay the Subscription Fee to your Reseller, the Reseller is responsible for paying all Subscription Fees to Sage on your behalf. If Sage has not received payment of the applicable Subscription Fees either from you or from your Reseller (as the case may be) or if Sage has received notification from your Reseller of your non-payment of the same, then without prejudice to Sage's other rights and obligations Sage may suspend or terminate your Subscription.
- 5.6** The Subscription Fees you pay will be based on Sage's current price list, which may vary from time to time and are subject to such concessions as Sage may in its absolute discretion apply from time to time. Subscription Fees may increase in accordance with **sections 4.3 and 5.7**.
- 5.7** Sage reserves the right to increase your Subscription Fees upon the commencement of your Renewal Term. Sage will use its reasonable endeavours to give you (or your Reseller if you purchased your Subscription from a Reseller) 60 days' written notice prior to the commencement of your Renewal Term of the amount by which your Subscription Fees will increase (unless the Sage Group plc entity from which you purchased your Subscription has agreed to give you a different number of days written notice prior to your Renewal Term). If you continue to Use your Subscription after the fee change takes effect, you will be deemed to (a) agree to the fee change and (b) authorize Sage to collect the new Subscription Fee amount using the agreed payment method.
- 5.8** You agree that, so long as your Subscription is active, Sage may automatically bill the same credit card or debit the same bank account you provided to Sage on the same periodic basis as previously agreed with you, unless subsequently agreed otherwise.



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**5.9** Subject to **section 5.3**, if you have agreed to pay the Subscription Fee to your Reseller, then the terms in your agreement with your Reseller in relation to payment of Subscription Fees and any other services provided by the Reseller to you will prevail over the payment terms in this **section 5**.

**5.10** 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 agreement so that all such obligations become immediately due and payable and/or suspend your access to the Service 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.

## **6. PROPRIETARY RIGHTS**

**6.1 Sage Intellectual Property Rights.** Subject to the limited rights expressly granted hereunder, Sage alone (and its licensors, where applicable) reserves all rights, title and interest in and to the Service, including all related Intellectual Property Rights. All rights not expressly set out in this Agreement are reserved by Sage. The Sage name, logo and the product names associated with this Service are trademarks of Sage or third parties and no right or license is granted to use them.

**6.2 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 12.6**.

**6.3 Feedback.** 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.

## **7. LIMITED WARRANTIES AND DISCLAIMERS**

**7.1 Authority.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**7.2 Sage Warranties.** Sage warrants that: (i) the Service will perform materially in accordance with the Documentation under normal use and circumstances; and (ii) Sage will not materially decrease the overall functionality of the Service during a current Subscription Term.

**7.3 Remedies.** If you notify Sage in writing that the Service does not conform with any of the warranties in **section 0**Sage 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 **section 7.3** constitutes your sole and exclusive remedy for any breach of the warranties set out in **section 7.2**.

**7.4 DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE AND CONTENT IS PROVIDED ON AN "AS IS" BASIS AND SAGE DISCLAIMS 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, SAGE DOES 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

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WILL MEET YOUR REQUIREMENTS OR PRODUCE PARTICULAR OUTCOMES OR RESULTS. SAGE IS NOT RESPONSIBLE FOR ANY ISSUES WITH THE SERVICE THAT ARISE FROM CUSTOMER DATA, THIRD-PARTY SERVICES OR THIRD-PARTY PROVIDERS. YOU ACKNOWLEDGE THAT SAGE DOES NOT PROVIDE ANY ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO YOU, USERS, OR ANY THIRD PARTY.

## 7.5 Other Limitations and Requirements.

**7.5.1** If you purchased your Subscription or any other related services from any distributor, reseller or dealer (including a Reseller) you should investigate and satisfy yourself regarding their experience, skills and qualifications. Any such third party from whom you have purchased the Subscription or other services is an independent contractor and is expressly not appointed or authorised by Sage as its servant or agent. No such person has any authority, either express or implied, to amend this Agreement, or to enter into any contract or provide any representation, warranty or guarantee with or to you on Sage's behalf, or otherwise to bind Sage in any way whatsoever. Sage will not be responsible for any modifications made to the Service by such persons, nor for any of their acts or omissions.

### 7.5.2 YOU ARE RESPONSIBLE FOR ADOPTING REASONABLE MEASURES TO:

**7.5.2.1 ENSURE THE ACCURACY OF YOUR CONTENT AND THE PROCESS BY WHICH IT IS INPUT INTO THE SERVICE;**

**7.5.2.2 EXAMINE AND CONFIRM RESULTS OBTAINED FROM THE SERVICE BEFORE YOU RELY ON IT;**

**7.5.2.3 ADOPT PROCEDURES TO IDENTIFY AND CORRECT ERRORS AND OMISSIONS; AND**

**7.5.2.4 RECONSTRUCT YOUR CONTENT.**

## 8 EXCLUSIONS OF AND LIMITATIONS ON LIABILITY

**8.1** OTHER THAN YOUR OBLIGATIONS TO PAY FEES AS SET OUT IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE VALUE OF THE FEES PAID BY YOU TO SAGE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

**8.2 Exclusion of Damages.** In no event shall either party be liable to the other for any: (i) loss of or damage to data, revenue, business, or profits; (ii) any other indirect, punitive, special, exemplary, incidental or consequential damages or losses; or (iii) any damage caused by third-party hosting providers.

**8.3** The exclusions and limitations set out in this **section 8** apply to all causes of action (in each case whether direct or indirect and howsoever arising), whether arising from any breach of contract, tort (including negligence), breach of statutory duty, or otherwise, even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.

**8.4 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.

**8.5 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.

**8.6 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.

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## 9. INDEMNIFICATION

- 9.1 Sage Indemnification.** Subject to **section 9.4**, 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.
- 9.2** 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 this Agreement and refund you a pro-rata refund of any prepaid fees covering the remainder of the term after the effective date of termination.
- 9.3 Indemnification by you.** Subject to **section 9.4**, 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 or Content in breach of this Agreement infringes the rights of, or has caused harm to, a third party.
- 9.4 Indemnification Procedure.** In the event of a potential indemnity obligation under this **section 9**, 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.
- 9.5 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 section.

## 10. PRIVACY

- 10.1** Sage will not actively monitor Your Content but will investigate complaints of violations of a third party right. Sage will cooperate with those attempting to minimize Internet or telecommunication abuse and reserves the right to institute filters or other mechanisms for that purpose. Sage will cooperate with law enforcement authorities and may notify such authorities if it suspects that you are engaged in illegal activities. For more information regarding Sage's protection of your information, please consult Sage's Privacy Notice. Your use of third party Supplemental Services or Third-Party Services may also be subject to privacy policies of those third party providers.

## 11. CONFIDENTIALITY

- 11.1 Definition of Confidential Information.** Subject to **section 11.2**, "**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, the Content, business and marketing plans, pricing and payment information, technology and technical information, product designs, and business processes.

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- 11.2 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 authorized for release (in writing) by the Disclosing Party; and (vi) Aggregate Data.
- 11.3 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.
- 11.4 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.
- 11.5 Injunctive Relief.** A breach of this **section 11** 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 11** without the need to prove damages or post a bond or other surety.
- 12. CUSTOMER DATA**
- 12.1** This **Section 12** applies to the extent the GDPR governs Sage's Processing of your data (including Customer Data).
- 12.2** 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.
- 12.3** You warrant and represent that:
- 12.3.1** you will comply with and will ensure that your instructions for the Processing of Customer Personal Data will comply with the Data Protection Laws;
  - 12.3.2** you are authorized pursuant to the Data Protection Laws to disclose any Customer Personal Data which you disclose or otherwise provide to Sage regarding persons other than yourself;
  - 12.3.3** 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:
    - 12.3.3.1** you to disclose the Customer Personal Data to Sage;
    - 12.3.3.2** Sage to Process the Customer Personal Data for the purposes set out in this Agreement; and
    - 12.3.3.3** Sage to disclose the Customer Personal Data to: (a) its 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 Sage, 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.
- 12.4** To the extent the GDPR governs Sage's Processing of any Customer Personal Data, the terms of Exhibit A shall apply and the parties agree to comply with such terms.

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- 12.5** Where, and to the extent Sage Processes your Personal Data as a Data Controller in accordance with the Privacy Notice, Sage shall comply with all Data Protection Laws applicable to Sage as Data Controller.
- 12.6** You agree that Sage may record, retain and use Customer Data generated and stored during your use of the Service (including Customer Personal Data, which Sage shall Process as Data Controller as set out in the Privacy Notice, on the basis of Sage's legitimate business interests), in order to:
- 12.6.1** deliver advertising, marketing (including in-product messaging) or information to you which may be useful to you, based on your use of the Service;
  - 12.6.2** carry out research and development to improve Sage, and its Affiliates', services, products and applications;
  - 12.6.3** develop and provide new and existing functionality and services (including statistical analysis, benchmarking and forecasting services) to you and other Sage customers;
  - 12.6.4** provide you with location-based services (for example location relevant content) where Sage collects geo-location data to provide a relevant experience,

provided that Sage shall only record, retain and use the Customer Data and/or Process Customer Personal Data on a pseudonymized 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 right, title and interest in the Aggregate Data. If at any time you do not want Sage to use Customer Data in the manner described in this **section 12.6**, please contact Sage at the email address set out in the Privacy Notice.

- 12.7 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.
- 12.8 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 anonymized, aggregated basis for their own purposes, including for disclosure, distribution, licensing or sale.

## 13 TERMINATION

- 13.1** This Agreement commences on the Commencement Date and continues until it is terminated in accordance with the provisions of this Agreement. You cannot access the Service after this Agreement is terminated.
- 13.2** Subscriptions will automatically renew for the Renewal Term equal to the expiring Subscription Term (unless agreed otherwise between the parties) unless either party gives the other or a Reseller (as the case may be) written notice of non-renewal (and the written notice required will be as notified to you by the Sage Group plc entity from which you purchased your Subscription) before the end of the relevant Subscription Term; if no such notice period was prescribed by the relevant Sage Group plc entity then the relevant notice period will be 90 days' written notice. Where a party gives such written notice then your Subscription shall end at the end of the relevant Subscription Term.
- 13.3 Termination for Cause.** Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if: (i) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if remediable) fails to remedy that breach within 30 days of being notified in writing to do so; (ii) to the extent permitted by applicable law, the other party becomes the subject of a petition in bankruptcy or other proceedings relating to insolvency or makes an assignment for the benefit of creditors; or (iii) if the other party suspends or ceases, or threatens to suspend or cease, to trade.
- 13.4 Termination for Non-Payment.** Sage may terminate this Agreement with immediate effect by giving written notice to you if you fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 10 business days after being notified in writing to make such payment.

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- 13.5 Effect of Termination.** On termination of this Agreement for any reason: (i) all applicable User licences and other rights granted to you shall immediately terminate; (ii) 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 (iii) subject to clause **Error! Reference source not found.**, 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.
- 13.6 Survival.** 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.
- 13.7** If this Agreement terminates for any reason, your Customer Data will remain your Customer Data and you are entitled to extract it before the end of this Agreement. However, your failure to extract your Customer Data will not prevent this Agreement from ending. Sage may be able to extract your Customer Data up to 30 days after this Agreement has terminated and may make a charge for providing your Customer Data to you in such circumstances.
- 13.8** Sage will have no liability to you or any third party for the termination of this Agreement with or without cause, including without limitation, liability for compensation, reimbursement or damages on account of the loss of prospective profits or on account of expenditures, investments, leases or commitments made in connection with your business or goodwill or for any other reason whatsoever.
- 14 GENERAL TERMS**
- 14.1 Compliance with Laws.** You shall comply with all applicable laws and/or regulations in relation to your use of the Service, including but not limited to applicable laws in relation to anti-bribery, anti-corruption and tax evasion.
- 14.2 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. The Sage group company with which you contracted for the Service is entering into this Agreement as principal and not as agent for any other Sage group company. Subject to any permitted assignment under **section 14.4**, the obligations owed under this Agreement by the Sage group company with which you contracted for the Service shall be owed to you solely by that Sage group company and the obligations owed by you under this Agreement shall be owed solely to that Sage group company.
- 14.3 Export.** The Service and your Subscription 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 United States government denied-party list. You shall not permit your Users of the Service to access or Use the Service in a United States embargoed country or in violation of any United States export law or regulation.
- 14.4 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.
- 14.5 U.S. Government Restricted Rights.** If the Sage Group plc entity with which you contracted for the Subscription and Service is Sage Software, Inc., the Subscription and Service are made available with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government (including its agencies and instrumentalities) is subject to restrictions set forth in 48 CFR 52.227-19 or DFARS 252.227-7014, as applicable. Sage Software, Inc. is the distributor in North America. Sage Software, Inc.'s address in the United States is 271 17<sup>th</sup> Street, Suite 1100,

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Atlanta, Georgia 30363; Sage Software, Inc.'s address in Canada is 120 Bremner Blvd., Suite 1500, Toronto, Ontario M5J 0A1, Canada.

- 14.6 Jurisdictional Rights.** This Agreement gives you specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction, for example, some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some or all of the provisions of this Agreement may not apply to you in which case the provisions of **section 14.14** will apply.
- 14.7 Waiver.** No failure of 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.
- 14.8 Verification of Use.** Sage reserves the right to monitor your use of the Service to verify compliance with any usage limits and this Agreement. If it is revealed that you have underpaid fees or owe fees to Sage, Sage will invoice you for the underpayment or amount due based on Sage's then current price list.
- 14.9 Force Majeure.** Notwithstanding any provision contained in this 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.
- 14.10 Third Party Rights.** Except as expressly set out in this Agreement, a person who is not a party to this Agreement will have no rights to enforce any terms in this Agreement.
- 14.11 Notices and Electronic Communications.** 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).
- 14.12 Reference Program.** Unless you send us a notice in accordance with **section 14.11**, Sage (or any company within the Sage Group Plc group of companies) may reference the relationship established by this Agreement by including your company name, and/or trade mark(s) and/or logo(s):
- 14.12.1** in its list of customers on Sage corporate websites or printed materials;
  - 14.12.2** in communications presenting Sage and its product and services to existing and prospective clients;
  - 14.12.3** in press releases (including in a 'customer win' release which is an announcement about Sage new clients and in Sage case studies (written or video) which may include a mutually agreeable quote or testimonial from one of your executives. Sage press releases and case studies may be published on Sage corporate websites.

If at any time you do not want Sage to use your company name and/or trade mark(s) and/or logo(s) in the ways described above please let Sage know by sending an email to [ipfilings@sage.com](mailto:ipfilings@sage.com) or by contacting your usual Sage representative. Sage will remove any reference to your company name and/or trade mark(s) and/or logo(s) as soon as reasonably possible, however, you acknowledge that it may take a short while to process your request and that some former publications of your company name and/or trade mark(s) and/or logo(s) may still be publicly available. For more information about how Sage uses information about you please refer to the Privacy Notice.

- 14.13 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the use of the Service and supersedes all prior or contemporaneous agreements, negotiations and discussions (whether written or oral) between the parties regarding the subject matter herein. Notwithstanding the fact that you may click on an "I Accept" or similar button during the activation of your Subscription, if you sign a paper copy of this Agreement, the parties agree that the terms in the physical signed document shall prevail over the terms of this Agreement to which you indicate your electronic acceptance by clicking the "I Accept" or similar button during the activation process. The parties acknowledge that in entering into this Agreement they have not relied on and will

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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 limited or exclude either parties' liability for fraud.

**14.14 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.

**14.15 Order of Precedence.** In the event of any conflict or inconsistency between the following documents, the order of precedence shall be (i) your Order; (ii) these terms and conditions and (iii) the Documentation.

**14.16 Modification.** This Agreement may not be modified except by a written agreement signed by You and an authorized Sage representative.

**14.17 Dispute Resolution.** If a dispute or other disagreement arises between the parties, then:

**14.17.1** each party agrees to promptly raise the matter internally to the relevant account managers for resolution and if the account managers are unable to rectify the matter within 30 days of being requested to do so, the parties will each escalate the matter to senior managers for resolution who will attempt to resolve the dispute within a further period of 30 days;

**14.17.2** if the senior managers are unable to resolve the matter within 30 days of being requested to do so, the parties will each escalate the matter to a director or vice president. The director or vice president will then in good faith attempt to resolve the matter within a further period of 30 days;

**14.17.3** where the matter has not been resolved following the procedure in **subsections 14.17.1 and 14.17.2**, then either:

**14.17.3.1** where you Subscribe to the Service primarily in North America, Argentina, Caribbean (except French Caribbean), Chile, Columbia, Cuba, Ecuador, Guatemala, Mexico, Panama, Peru, Puerto Rico or Uruguay, then any cause of action or claim arising out of or relating to this Agreement or the breach thereof, including without limitation, the validity, enforceability or scope of this Agreement, shall be settled by binding arbitration conducted in Atlanta, Georgia. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In addition, you agree that any cause of action or claim will be arbitrated individually and that you will not consolidate or seek class treatment for any claims, unless previously agreed to in writing by you and Sage; or

**14.17.3.2** otherwise either party is free to pursue alternative remedies.

Neither party can commence any litigation or court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute in accordance with this **section 14.17** except where a party seeks interim injunctive relief or to issue a claim within an applicable limitation period.

**14.18 Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of the Sage Group plc entity that you are contracting with as set out in the column entitled "Governing Law" in the table set out in Exhibit B.

Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of the country and State (as applicable) of the Sage Group plc entity you are contracting with as set out in the column entitled "Court of Jurisdiction" in the table set out in Exhibit B over any claim or matter arising out of or in connection with this Agreement or the legal relationships established by it.



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## EXHIBIT A – DATA PROTECTION

### 1. Interpretation

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

### 2. Processing of Customer Personal Data

- 2.1 During the term of this Agreement Sage warrants and represents that it:

2.1.1 shall comply with the Data Protection Laws applicable to Sage whilst such Customer Personal Data is in Sage's control;

2.1.2 when acting in the capacity of a Data Processor, shall only Process the Customer Personal Data:

2.1.2.1 as is necessary for the provision of the Service under this Agreement and the performance of Sage's obligations under this Agreement; or

2.1.2.2 otherwise on your documented instructions.

- 2.2 Sage agrees to comply with the following provisions with respect to any Customer Personal Data Processed for you in connection with the provision of the Service under this Agreement.

### 3. Obligations of Sage

- 3.1 Sage shall:

3.1.1 taking into account the nature of the Processing, assist you by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of your obligations 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 it, 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 Sage 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 Customer Personal Data is strictly limited to those individuals who need to know and/or access the Customer Personal Data for the purposes of this Agreement; and

4.1.3 ensure that persons authorized to Process the Customer 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.

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## 5. Security and Audit

- 5.1 Sage shall implement and maintain appropriate technical and organizational security measures appropriate to the risks presented by the relevant Processing activity to protect the Personal Data against unauthorized or unlawful Processing and against accidental loss, destruction, damage or disclosure. Such measures include, without limitation, the security measures set out in **section 5.3** below.
- 5.2 Subject to any existing obligations of confidentiality owed to other parties, Sage shall make available to you all information reasonably necessary to demonstrate compliance with the obligations set out in this Exhibit 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 Sage.
- 5.3 Sage operates, maintains and enforces an information security management programme ("**Security Program**") which is consistent with recognized industry best practice. The Security Program contains appropriate administrative, physical, technical and organizational safeguards, policies and controls in the following areas:
- 5.3.1 information security policies;
  - 5.3.2 organization of information security;
  - 5.3.3 human resources security;
  - 5.3.4 asset management;
  - 5.3.5 access control;
  - 5.3.6 cryptography;
  - 5.3.7 physical and environmental security;
  - 5.3.8 operations security;
  - 5.3.9 communications security;
  - 5.3.10 system acquisition, development and maintenance;
  - 5.3.11 supplier relationships;
  - 5.3.12 information security incident management;
  - 5.3.13 information security aspects of business continuity management;
  - 5.1.14 legislative, regulatory and contractual compliance.

## 6. Data Breach

- 6.1 Sage shall notify you if it becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Customer Personal Data arising from any act or omission of Sage or its sub-processors.

## 7. Transfer of Personal Data outside the EEA

- 7.1 You expressly agree that Sage may transfer Customer 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 Service may require the Processing of Customer Personal Data by sub-processors in countries outside the EEA. Sage shall not transfer Customer 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.

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## 8. Return and deletion

- 8.1 At your option, Sage shall delete or return all Customer Personal Data to you at the end of the provision of the Service and delete all existing copies of Customer Personal Data unless Sage is under a legal obligation to require storage of that data or Sage has another legitimate business reason for doing so.

## 9. Use of Sub-Processors

- 9.1 You agree that Sage has general authority to engage third parties, partners, agents or service providers, including its Affiliates, to Process Customer Personal Data on your behalf in order to provide the applications, products, services and information you have requested or which Sage believes is of interest to you ("**Approved Sub-Processors**"). Sage 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, Sage shall ensure that the same obligations set out in this Exhibit A shall be imposed on that sub-processor.
- 9.2 Sage shall be liable for the acts and omissions of its Approved Sub-Processors to the same extent Sage would be liable if performing the services of each Approved Sub-Processor directly under the terms of this Exhibit A.

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## EXHIBIT B

Reference to the term “Sage” in this Agreement means the Sage Group plc entity as indicated in the table below:

	<b>Sage Entity and Address</b>	<b>Governing Law</b>	<b>Court of Jurisdiction</b>
If you contracted with Sage in the United Kingdom (including where your company, business or organization is based in the Republic of Ireland) for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage (UK) Limited, registered company number 1045967, with a registered office address at North Park, Newcastle upon Tyne, NE13 9AA.	English law	English.
If you contracted with Sage in the United States or your company, business or organization is based in Argentina, Caribbean (except French Caribbean), Chile, Columbia, Cuba, Ecuador, Guatemala, Mexico, Panama, Peru, Puerto Rico or Uruguay, for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage Software, Inc., a Virginia corporation located at 271 17 <sup>th</sup> Street, Suite 1100, Atlanta, Georgia 30363.	The laws of the State of Georgia (without reference to its conflicts of law principles) and controlling United States federal laws.	The exclusive court will be located in Gwinnett County, Georgia for state subject matter and Fulton County, Georgia for federal subject matter.
If you contracted with Sage in Canada for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage Software Canada Limited, an Ontario corporation located at 120 Bremner Blvd., Suite 1500, Toronto, Ontario M5J 0A1, Canada.	The laws of the Province of British Columbia.	The exclusive court will be located in Vancouver.
If you contracted with Sage in France for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage SAS, with a share capital of 6,750,000€ and registered in Paris under number 313 966 129, located at 10, rue Fructidor-75834 Paris cedex 17 Paris.	French law.	Court of Paris.
If you contracted with Sage in Germany for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage GmbH Franklinstraße 61-63, 60486 Frankfurt am Main.	German law (without reference to its conflicts of law principles and without the UNICTRAL).	Frankfurt am Main.
If you contracted with Sage in Spain for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:	Sage Spain, S.L., with registered office at Madrid, Avenida Europa, 19, 1 <sup>st</sup> floor, (28108) Alcobendas (Madrid).	Spanish law.	Madrid courts.

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<p>If you contracted with Sage in South Africa for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:</p>	<p>Sage South Africa (Pty) Ltd, with a street address at Sage Technology Park, 102 Western Services Road, Gallo Manor Ext. 6, Johannesburg, 2191, South Africa and a postal address at PO Box 781893, Sandton, 2146, South Africa.</p>	<p>South African law.</p>	<p>Johannesburg, South Africa.</p>
<p>If you contracted with Sage in Australia (including where your company, business or organization is based in New Zealand or the Pacific Islands) for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:</p>	<p>Sage Software Australia Pty Ltd (ACN 071 007 326), with a registered office address at Level 11, Zenith Tower B, 821 Pacific Highway, Chatswood NSW 2067, Australia.</p>	<p>Australian law.</p>	<p>New South Wales, Australia.</p>
<p>If you contracted with Sage in Portugal for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:</p>	<p>Sage Portugal – Software, S.A., Edifício Olympus II, Av. Dom Afonso Henriques 1462, 4450 Matosinhos, Portugal.</p>	<p>Portuguese law.</p>	<p>Porto courts.</p>
<p>If you contracted with Sage in Switzerland for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:</p>	<p>Sage Schweiz AG, Platz 10, 6039 Root D4, Switzerland.</p>	<p>Swiss law.</p>	<p>Lucerne, Switzerland.</p>
<p>If you contracted with Sage in Brazil for the Use of the Service, the Sage contracting entity, governing law and court of jurisdiction will be:</p>	<p>Sage Brasil Software S.A. Rodovia Luiz de Queiroz (SP 304), km. 127,5, city of Americana, State of São Paulo, Brasil.</p>	<p>Brazilian Law.</p>	<p>City of Americana, State of São Paulo.</p>