

The Sage logo, consisting of the word "sage" in a white, lowercase, sans-serif font, is positioned on a dark green rectangular background.

**Accountants' Club**

## Membership Agreement

# Accountants' Club Membership Agreement

**This Agreement sets out the terms and conditions of your membership.**

## 1. Definitions

**1.1** In this Agreement:

“Accountancy Practice” means a business whose primary function is the provision of audit and/or accountancy and/or taxation services to external clients and where such accountancy services account for greater than 50% of the total revenue of the individual branch office of such Accountancy Practice (no more than 25% of such total revenue may be attributable to the provision of a payroll bureau);

“Affiliate” means, in relation to any company, any holding company of that company or any subsidiary of any such holding company (“holding company” and “subsidiary” shall have the meanings assigned to each of them by section 736 of the Companies Act 1985 (as amended));

“Annual Membership Fee” means the annual fee payable by you to us in relation to annual membership of the Sage Accountants' Club;

“Clients” means clients of your business, and non-client customers to which you sell licences for the Products, in each case, which either wish to use the Products for their own use, or which are other members of the Sage Accountant Club;

“Club Products” means any complimentary Products and updates you receive from us;

“Commencement Date” means the first date on which you indicate your acceptance of this agreement by using any of the benefits of membership of the Sage Accountants' Club;

“End User” means a Client to which you sell licence(s) for the Products for their own use and not resale;

“End User Licence” means the agreement between us and the End-User;

“Fee” means any fees payable for the purchase of Club membership;

“Order” means an order for Products made in accordance with our ordering procedure notified to you from time to time (and “Ordered” shall be interpreted accordingly);

“Products” means our licensed software products (excluding Club Products) and associated manuals as well as associated services made available by us to you for licence sales under this Agreement;

“SageCover” means technical telephone, e-mail and online support services in relation to certain Club Products comprising software (such Products as specified by us) and other related services provided by us on the basis of our terms and conditions for providing such support and related services;

“Territory” means the United Kingdom of Great Britain and Northern Ireland.

**1.2** The term “you”, “your” and “yours” shall mean the individual branch office comprising an Accountancy Practice, which contracts under this Agreement and the term “we”, “us” and “our” shall mean, as the context requires, either Sage (UK) Limited, or alternatively it may mean reference to both you and Sage (UK) Limited together.

**1.3** Headings are inserted for ease of reference only and shall not affect interpretation.

## 2. Your membership and licence

**2.1** Subject to receipt by us of your Annual Membership Fee, we confirm your membership of the Sage Accountants' Club and subject to the terms and conditions of this Agreement we grant you:

**2.1.1** a non-exclusive right during this Agreement to sell licences for the Products supplied by us, to

Clients in the Territory; and

**2.1.2** the benefits provided by such membership (as communicated to you at the Commencement Date and as amended from time to time in accordance with this Agreement), in each case for one year from the Commencement Date, unless this Agreement is terminated earlier in accordance with its terms. Subsequently, membership may be renewed on payment of the Annual Membership Fee.

**2.2** We grant you a non-transferable and non-exclusive right during this Agreement to use the Club Products and associated SageCover in the Territory for in house purposes and for demonstration to Clients, for use in accordance with the relevant agreements supplied with the Club Products. We reserve the right to invoice you for the full price (plus VAT) of the Club Products in the event of termination of this Agreement within the first 6 months of your membership of the Sage Accountants' Club.

**2.3** Except as expressly set out in this Agreement, you shall have no other rights to use or exploit the Products. All intellectual property rights in the Products, including, without limitation, copyright in any software contained in them, shall remain at all times with us and no such rights are licensed by us to you. You agree not to sub-licence any such rights.

**2.4** You will inform all End Users in advance of any sale of any licence for a Product about the End User Licence and, if you are assisting them in its installation, ensure they indicate their acceptance of it, in accordance with the terms of the relevant End User Licence.

## 3. How does product ordering work?

**3.1** Subject to availability and in response to any Orders placed by you and accepted by us, we shall supply to you Products for sale

within the Territory. Any Products supplied by us to you shall be subject to the terms of this Agreement. All other terms, conditions, representations and warranties, whether express or implied, are expressly excluded to the maximum extent permitted by law.

**3.2** No contract for the supply of the Products shall arise between us unless and until an Order has in each case been accepted by us. You will not normally be able to cancel an Order once accepted by us. Any exception to this will be dealt with on a case by case basis and will be entirely at our discretion.

**3.3** We will use all reasonable endeavours to ensure prompt deliveries of all Products but we shall not be under any liability for any failure to do so.

**3.4** Any claims against us for shortages in delivery must be made by you within 30 days of receipt of the Products. Notwithstanding this we shall be entitled to withhold delivery of any items Ordered by you for so long as payment for any items previously delivered under this Agreement is outstanding.

**3.5** You agree to store and transport the Products in a manner that keeps them in good condition and to comply with any reasonable requests made by us concerning the conditions in which they are to be stored or transported.

**3.6** If we request you to do so, you shall use your reasonable endeavours to recover any defective Products and to prevent their sale to third parties.

**3.7** Unless you have our prior written consent, you shall not actively promote the Products outside the Territory and shall ensure that your Affiliates do not do so. Nothing in this Agreement shall prevent you from distributing Products to customers outside the Territory who contact you directly, so long as they have not contacted you as a result of your or your Affiliates' active

promotion of the Products outside the Territory.

**3.8** Neither you nor your Affiliates shall be prevented from performing contractual or professional obligations which have been undertaken and disclosed in writing to us prior to the date of this Agreement.

**3.9** 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 obligations or make any promise or representation on our behalf or claim to be able to do any such thing.

#### **4. Withdrawal of products from time to time**

We may withdraw any Products at any time and if we do, the following provisions shall apply in respect of such Products:

**4.1** all unfulfilled Orders for those Products shall be automatically cancelled;

**4.2** you shall stop selling licences for those Products. Subject to reimbursement by us of any payments received from you in respect of the relevant Products, you shall promptly return the relevant Products to us, or, if requested by us to do so, destroy any remaining stocks of such Products still in your possession after any relevant period of notice has expired; and

**4.3** you shall immediately relinquish all rights under this Agreement in respect of such Products.

#### **5. What are the payment, price and other terms of business between us?**

**5.1** You shall pay for the Products before the end of the month after the month of the date of our relevant invoice, unless and to the extent we have agreed separate credit arrangements in writing.

**5.2** The price payable by you to us

for a Product shall be our recommended list price for that Product, less any applicable discount, both as notified by us from time to time. We reserve the right to alter our prices and discounts at any time.

**5.3** You agree that in addition to the price of the Products you will pay the costs associated with the dispatch and delivery of the Products to you and all other charges applicable to this Agreement which may be notified to you by us from time to time.

**5.4** You agree that you will be responsible for payment of value added tax 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.

**5.5** 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 at the statutory rate from time to time, from the due date until the date of actual payment and interest shall accrue before as well as after judgment.

**5.6** The Products shall be at your risk from the time you receive them.

**5.7** Title to a Product shall pass to you when we have received full payment for that Product.

**5.8** If you provide us with any personal data as defined in the Data Protection Act 1998 (i.e. which identifies living individuals), we will use it to perform our contractual and other legal rights and obligations, including to contact you via your relevant, nominated personnel about other relevant products and services which we offer and to conduct customer research. If at any time you do not want us to use it in this way, please contact us.

#### **6. Our joint commitment to promoting the Products**

**6.1** We are willing to assist you in your own promotional campaigns for

the Products by supplying a reasonable amount of relevant promotional materials, including sales literature, marketing pamphlets, manuals and other similar written material, as we deem appropriate. We will provide such materials subject to availability and if we intend to charge for supplying them, we will advise you of the costs in advance. You shall bear the cost of your own such campaigns and the cost of any additional materials which you ask us to provide.

**6.2** If we request you to do so, you shall ensure that our name and logo appears on your sales literature relating to the Products, and that all your advertising and promotional materials are submitted for our approval prior to being used.

**6.3** At our sole discretion, we may select certain Sage Accountants' Club Members to which we will pass any particular sales enquiry arising out of our marketing campaigns undertaken from time to time. Any such selections will generally be based upon any expressed customer preference and then individual Sage Accountants' Club Member expertise and location.

**6.4** For the purpose of this clause 6.4, the terms "Personal Data", "Processing", "Data Processor" and "Data Controller" shall have the meanings given to them in the Data Protection Act 1998 (in this clause, the "DPA"). If either of us choose to provide Personal Data to the other, both of us agree that:

**6.4.1** both of our Processing of Customers' and prospective customers' Personal Data (including any disclosure) will comply with the DPA at all times; and

**6.4.2** if one of us is a Data Controller and requests the other to process Personal Data on its behalf as Data Processor, the Data Processor shall act only on the Data Controller's instructions, comply with the DPA (including the seventh data

protection principle regarding security) and (if required by the Data Controller to do so) enter into an additional agreement to confirm this.

**6.5** We operate an anti piracy programme relating to all our software products, to ensure that we and all of our distributors are able to maximise the benefits from legitimately distributing our products. If you become aware of any unauthorised or illegal use or copying or other unauthorised exploitation of any Product, you may, if you wish, report it to us using the relevant contact details on our web site. If you do so, we will use reasonable endeavours to investigate any information you give to us and we may ask you to help us with that investigation. While you have no obligation to do so, any assistance you can give will benefit both of us. We are currently aware that our software products are being sold illegitimately on various auction and other third party web sites. If you wish to distribute or are distributing the Products legitimately in such manner, you should notify us in writing as soon as possible, to avoid us mistakenly taking any action in relation to that distribution.

## **7. Our intellectual property rights - what can and can't be used?**

**7.1** You agree not to use any material containing our name or any of our trade marks or logos unless such materials have been supplied by us on the Products or on our publicity material, or your use of the same has been approved by us pursuant to clauses 6.2 or 7.2. You also agree to comply with any brand guidelines we may issue from time to time and to make any changes within 14 days of our notifying you of them.

**7.2** Other than as permitted by clauses 6.2 and 7.1 and except with our prior written consent, you shall not use or permit to be used any name, trade mark, trade name,

insignia, logo, symbol or slogan owned or adopted by us or any of our Affiliates. You agree not to use (or permit to be used) our name as part of your corporate or business name but always to display your corporate or business name wherever you display our name, trade mark, trade name, insignia, logo, symbol or slogan. You must obtain our written consent prior to using our name or permitting it to be used as part of any domain name or meta-tags registered to you or under your control and you will at any time on our request transfer such domain name to us. We will pay all reasonable out of pocket expenses relating to such transfer.

**7.3** You acknowledge that all of the trade marks, copyrights, patents, design rights and other intellectual property rights in the Products (together with any modifications or changes) are our property and that you acquire no proprietary rights in any of them and you agree not to claim to grant any.

**7.4** You agree to inform us if you become aware of any actual or potential infringement of any of our trademarks, copyright, patents or other intellectual property rights. If any such actual or potential infringement is in any way controlled by you, you shall at our request and expense sign, execute and do all such deeds, documents, acts and things (including without limitation allowing your name to be used in any proceedings) as we may reasonably require with a view to restraining such infringement and/or obtaining damages.

## **8. Can you develop our products?**

You may not nor permit any Client or other third party to modify, develop or otherwise amend or alter the Products unless authorised by us in writing to do so.

## 9. System upgrade overlap

Where you have received an upgrade or update of any of the Products, you may continue to use the immediately prior version for dual processing. However, such dual processing licence shall immediately terminate on dispatch by us of any further update or upgrade. This means that at any one time, you may only have installed the current version and the immediately previous version of any Product.

## 10. Is any information confidential?

**10.1** We both acknowledge that all and any information (written or oral) relating to or received as a result of this Agreement and disclosed by one of us to the other is confidential and is to be used solely for the operation and purposes of this Agreement except information which is:

**10.1.1** to be disclosed by court order or otherwise as required by law;

**10.1.2** already in or subsequently comes into our possession other than as a result of a breach of this clause 10; or

**10.1.3** already in the public domain other than as a result of a breach of this clause 10 or any other obligation of confidentiality.

**10.2** You recognise that all information concerning the Products not in the public domain, including any unpublished specifications, is confidential information under this Agreement and as such you agree to:

**10.2.1** only disclose such information to your personnel as is necessary for them to know; and

**10.2.2** ensure that those members of your personnel to whom you disclose the information know that it is our confidential information and comply with the provisions of this clause.

**10.3** We both agree to hold confidential the terms of this Agreement and, to protect any trade information which may from time to time be disclosed by one of us to the other under the terms of this Agreement or otherwise.

## 11. Our liability to you under this agreement

**11.1** You acknowledge that:

**11.1.1** the price of the Products has been calculated on the basis that we exclude and/or limit our liability to you in accordance with this Agreement; and

**11.1.2** the exclusions and limitations contained in this Agreement are fair and reasonable in all the circumstances known at the date of this Agreement.

**11.2** You accept that it is your responsibility to determine whether the Products meet your specific requirements and those of Clients. We do not warrant:

**11.2.1** that the Products will operate in all selected combinations;

**11.2.2** that operation of the Products will be uninterrupted or error free or that all Product errors will be corrected; and

**11.2.3** that operation of the Products will meet your requirements or those of Clients.

**11.3** You agree to notify us in writing as soon as you are aware of:

**11.3.1** any claim involving the Products that comes to your attention;

**11.3.2** all claimed or suspected defects in the Products; and

**11.3.3** any material change in your management or control.

**11.4** Nothing in this Agreement shall limit our liability for:

**11.4.1** fraud, or

**11.4.2** death or personal injury caused by our wilful default or negligence.

**11.5** Except as set out in clause 11.4, we shall not be liable for any loss, damage, costs or expense incurred by you:

**11.5.1** after the date we correct a defect in any Product;

**11.5.2** after the date on which you terminate this Agreement; and

**11.5.3** to the extent that we afford you a reasonable opportunity to mitigate your losses, damage, liabilities or expenses by providing alternative or additional Products.

**11.6** Except as set out in clause 11.4, we will not be liable for any other loss or damage (including any caused by negligence) however caused and even if foreseeable by us including without limitation:

**11.6.1** economic loss, including but not limited to: loss of profits, loss of use of profits, loss of business or business interruption, loss of revenue, loss of goodwill or loss of anticipated savings;

**11.6.2** special, indirect or consequential loss;

**11.6.3** loss of or damage to your or any End User's or a third party's data;

**11.6.4** loss arising from any claim made against you by a Client or third party;

**11.6.5** loss or damage arising from your failure to fulfil your responsibilities or any matter under your control or a third party; or

**11.6.6** loss or damage arising from any claim made against you based on any representation made by you.

**11.7** Subject to clause 11.4, our entire liability for any claim arising in connection with this Agreement, whether in tort (including negligence), contract or otherwise shall not exceed the total sum paid by you for the specific Products (or waived by us in relation to Club Products) which are directly related to the claim.

**11.8** You agree to indemnify us in respect of any claim made against us by any Affiliate or third party (except an End User) in respect of the distribution of Products to any Affiliate or third party. Except in relation to any claim made by an End User, you shall indemnify us to the extent any such claim or liability may encompass the type of loss or liability excluded under this Agreement, and/or to the extent any such claim or liability may exceed our limit of liability as described in this Agreement.

**11.9** Each of the limitations and exclusions set out in this clause 11 is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held to be inapplicable or unreasonable in any circumstances. This clause shall remain in force despite termination of this Agreement.

## **12. How can this agreement be terminated?**

**12.1** Either of us may terminate this Agreement by giving to the other at least 3 months' written notice.

**12.2** You agree that we shall be entitled to terminate this Agreement immediately if:

**12.2.1** you fail to pay any amount you owe us within five days of the due date; or

**12.2.2** you commit a material or persistent breach of your obligations under this Agreement and such breach (if rectifiable) is not rectified within 30 days following our notification to you of the breach.

**12.3** This Agreement shall terminate automatically without notice if:

**12.3.1** you are a corporate body, and you are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986) or you become insolvent or an order is made or a resolution passed for

your liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets you enter into or proposes any composition or arrangement with your creditors generally or papers are filed at court seeking a moratorium in respect of you under Schedule A1 of the Insolvency Act 2000; or

**12.3.2** you are a partnership or sole trader, and you cease to exist or a petition is presented, or an order is made, for bankruptcy of you or any of your partners, or if you or any of them enters into a deed of arrangement or compounds with his creditors or has a receiving order made against him; or

**12.3.3** anything similar to the circumstances described in clauses 12.3.1 and 12.3.2 occurs in any applicable jurisdiction.

**12.4** Termination shall be without prejudice to any rights or claims we may have against you at the time of, or subject to, such termination.

## **13. What happens if this agreement is terminated?**

Upon termination of this Agreement for any reason:

**13.1** all unfulfilled Orders for Products between us will be cancelled;

**13.2** all your indebtedness to us shall become immediately due and payable;

**13.3** any provisions of this Agreement which remain to be performed either in whole or in part, or which are capable of having effect after termination, will remain in full force and effect despite termination;

**13.4** there shall be no pro rata refund of the Annual Membership Fee;

**13.5** you shall discontinue the use of all signs, stationery, advertising and other material that would make it appear to the public that you have any connection with us or with the Products, other than where long term outstanding advertising, such as entries in the Yellow Pages telephone directory or similar products exists, provided that you shall not attempt to renew such entries and shall cancel them as soon as possible;

**13.6** you shall not use the name "Sage" or any of our trade marks, symbols, trade names or those of any of our Affiliates;

**13.7** you shall relinquish all rights granted by us to you;

**13.8** you shall return to us all price lists, literature, manuals and other documents and materials supplied by us to you; and

**13.9** you shall within ten working days of the termination of this Agreement uninstall all Club Products and return them to us (including any copies you have made of the Club Products (or any part of them)) and provide written confirmation signed by your duly authorised representative to confirm compliance with this clause 13.9.

## **14. Can either of us assign this agreement?**

This Agreement is personal to you and may not be assigned, subcontracted, licensed, charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent. We may in whole or in part assign, transfer, sub contract or otherwise dispose of any of our rights or obligations under this Agreement.

## **15. Do any other terms apply to this agreement?**

This Agreement and any other documents or terms and conditions referred to in it constitute the entire

agreement between us and supersede all other agreements whether written, oral, express or implied, other than those included in this Agreement. Each of us acknowledge that we have not entered into this Agreement in reliance upon any representations or warranties or other undertakings not fully reflected in the terms of this Agreement and that any agreement, statement or warranty not contained in this Agreement shall not be valid or binding, subject to clause 11.4.

#### **16. What happens if any term of this agreement is unenforceable?**

The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions which shall remain in full force and effect.

#### **17. How can changes be made to these terms ?**

This Agreement may only be varied or amended in writing, signed by an authorised officer of each of us, provided that we may change any documentation referred to in this Agreement, and any other relevant documentation, at any time by giving you written notice. We may update these terms in relation to a subsequent Club membership period by notifying you that they have changed, prior to you renewing your membership.

#### **18. What is the relationship between us?**

We both agree that we are both independent contractors and neither of us will represent ourselves as agent, servant, franchisee, joint venturer or partner of the other. You shall not hold yourself out as having any authority to accept an order on behalf of us or commit us to any liability or obligations of any kind and you shall not do anything to damage

our reputation or bring it in to disrepute.

#### **19. How can we serve notices on each other?**

Any notice to be given under this Agreement shall be deemed given on delivery, if delivered by courier to the address of the intended recipient; or one working day after posting, if sent by registered first class post (or the nearest equivalent if not available) to the address of the intended recipient, or at the time of sending, if sent by fax to the number last notified by the intended recipient and a successful delivery note is generated by the sending fax machine; or at the time of sending, if sent by electronic mail to the address last notified by the intended recipient and receipt is acknowledged (expressly or by conduct) by the intended recipient.

#### **20. What is our liability if something happens beyond our control?**

Neither of us shall be liable to the other for any failure to perform or for any delay in performance under this Agreement (other than an obligation to pay monies) to the extent such non-performance or delay is caused by any circumstances beyond our reasonable control.

#### **21. Third party product and service offerings**

**21.1** The products and services of any third party providers available to you due to your membership of the Sage Accountants' Club are made available under the terms and conditions of those third parties. We have no responsibility for the terms and conditions of any third party providers, or for securing any licence or regulatory approval required by third party providers to enable them to conduct business. The formation of contracts between you and any

third party providers is governed by the relevant third party's terms and conditions (which may be obtained from such third party).

**21.2** Whilst we may "co-brand" these products or services with our own, we do not endorse those products or services or warrant the accuracy or reliability of any information provided to you by such third parties. In particular, we do not warrant or guarantee that you will be satisfied with the products and/or services supplied by such third parties and you should make whatever enquiries you feel are necessary before proceeding with any such transactions

#### **22. Do any third parties have any rights under this agreement?**

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than in accordance with that Act.

#### **23. What law and jurisdiction applies to this agreement?**

**23.1** This Agreement shall be governed by and construed in accordance with English law and both parties submit to the exclusive jurisdiction of the English courts.

**23.2** Nothing shall prevent us from applying to any court in any part of the Territory or elsewhere for an injunction or other like remedy to restrain you from committing any breach or anticipated breach of this Agreement and for damages and other consequential relief.