

**Miller Waite Limited**

**ONLINE DATA BACKUP**

**AGREEMENT**

**Client:** **Customer Details**

**Commencement Date:** **Date commenced**

# Miller Waite – Online Data Backup Agreement

## Specific Terms and Conditions

### 1 DEFINITIONS

These Specific Terms and Conditions are to be read in conjunction with the General Terms and Conditions. All definitions contained within these Specific Terms and Conditions have the same meaning as those set out in the General Terms and Conditions unless specified below in which case they will have the meaning specified below: "Customer Order Form" means the order form for the supply by the Company of the Software and/or Services, completed by, or in accordance with an order from, the customer; "Minimum Cancellation Notice Period" means the minimum period of notice that a Customer must give to terminate the Service, as set out in Clause 4; "Minimum Service Period" means the minimum service period as set out in Clause 4.1; "Service" means the provision of the Online Data Backup service as specified on the Customer Order Form or as described in literature at the date of completion of the Customer Order; "Service Period" means the period of the Service provided in accordance with this Agreement; "Software" means the software to be provided by the Company in conjunction with the Service on the terms of this Agreement; **Miller Waite Limited (Company Registration Number 3182912) of Unit 12, Lightburn Trading Estate, Lightburn Road, Ulverston, Cumbria LA12 7NE** (hereinafter referred to as "the Company") **Customer Details** (hereinafter referred to as "the Customer").

### 2 THE SERVICES

**2.1** The Company shall provide the Service subject to the terms of this Agreement.

**2.2** The Customer can place the Customer order for the Service by completing and sending a completed Customer Order Form or the Customer's own Purchase Order Instruction (sent to the Customer pursuant to acceptance of the quotation supplied by the Company) by post, by fax or via the website to the address, fax number and otherwise in accordance with the process set out on our website or otherwise notified to the Customer before the Customer places the Customer Order.

**2.3** The Company shall not be obliged to accept a Customer Order or provide the Service unless and until written confirmation, or (if requested at the Company's discretion) evidence has been received and:

**a)** The Company has sent written notice to the Customer (either by post, fax or e-mail) of acceptance of the Customer Order Form (or otherwise commenced the Service); and

**b)** The Company has received any initial charges due from the Customer in respect of the Service.

**2.4** The Company agrees to install Software in conjunction with the Service.

**2.5** By accepting or using the Software and/or the Service, the Customer acknowledges that the Customer does not own it. Under the terms of this Agreement, in consideration of the fees the Customer pays to the Company, the Customer may use the Software only in conjunction with the Service.

**2.6** The Customer specifically agrees not to, nor make any attempt to, resell, distribute, adapt, modify, decompile or reverse engineer the Software, or otherwise discover the source code, underlying processes, or algorithms of the Software.

**2.7** The Customer agrees not to use the Service to store photographs, pseudo-photographs, films, articles, sound records, messages, or any other material that may be stored in a computer that may be described as indecent or obscene or is otherwise illegal.

**2.8** The Service can use both the dedicated and shared hardware platform, therefore the Customer may not use the Service in any way which might detrimentally affect the Service or experience of other users of the Service. The Company reserves the right to remove users who consistently misuse the Service.

**2.9** In the event of any failure, the Company will use reasonable endeavours to remedy any failures as soon as reasonably practicable to do so.

### 3 LIABILITY

**3.1** Under no circumstances will the Company be liable to the Customer or any other person for data that was never sent by the Customer, using the Software, to the relevant backup data centre assigned to the Service by the Company.

**3.2** The Company accepts liability to the extent it results from the negligence of the Company and its employees for death or injury without limit. Nothing in this Agreement shall limit liability for fraud.

**3.3** In all other cases not falling within clause 3.2, the Company's total liability to the Customer or any other person (whether in agreement, tort, including negligence, or otherwise) under or in connection with the Service or provision of the Software will not exceed the fees paid by the Customer for the use of the Service and Software.

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**3.4** This Clause 3 is in addition to the General Terms of Conditions that further set out our responsibility and extent of liability to the Customer.

### 4 SERVICE PERIOD

**4.1** Once the Service has been activated and is available for the Customer to use, the Customer may only end this Agreement by notice equal to the Minimum Cancellation Notice Period which must expire on or after the Minimum Service Period. The Minimum Service Period is 36 months from activation of the Service, at the end of which a new Service Period will automatically commence.

**4.2** Unless otherwise stated, the Minimum Cancellation Notice Period is 3 months prior to the end of the Minimum Service Period.

**4.3** The Company may terminate the Service by notice equal to the Minimum Cancellation Notice Period (to expire at any time on or after the Minimum Service Period) without our incurring any liability.

**4.4** The licence of the Software shall terminate immediately upon the earlier of the following to occur:

**a)** 30 days after the Customer has failed to pay any service charges due under Clause 5 on their due date; or

**b)** If the Customer becomes bankrupt, goes into liquidation, suffers or makes any winding up petition, makes an arrangement with the Customer's creditors, have an administrator, administrative receiver or receiver appointed or suffer or file any similar action in consequence of debt.

**4.5** Following termination of the Customer licence for whatever reason:

**a)** The Customer will destroy the Software together with all copies in any form, including copies on the Customer's hard disks and backup disks.

**b)** Any use of any copies of the Software will be unlawful; and the Company shall have the right to delete the Customer's stored data without liability for loss or damage.

**4.6** The Customer agrees to the contract for the provision of the Service as laid out in 4.1. If the Customer terminates the Service prior to the expiry of the Minimum Service Period, otherwise than by reason of any breach of this Agreement by the Company, the Customer shall make a one-off payment equal to the aggregate charges payable for the length of time remaining under the Minimum Service Period calculated on the banding rate applicable to the Customer's highest rate of usage of the Service.

**4.7** The Service is otherwise subject to the termination provisions of the General Terms and Conditions.

### 5 CHARGES

**5.1** Except as otherwise provided in the Agreement, all Charges and other sums due from the Customer in respect of the Service and/or Software shall be set out in the Customer Order Form and/or the invoice relating to such Service and/or Software.

**5.2** The Customer shall pay the Charges (without any set off or deduction of any kind) on a monthly basis, by Direct Debit, due on the first working day of each calendar month as stated in the Customer Order Form and/or the invoice referred to at Clause 5.1 above.

**5.3** All amounts payable by the Customer in accordance with the Agreement shall be exclusive of Value Added Tax ("VAT"), or any other applicable tax or duty, which shall be payable in addition to all such amounts due from the Customer.

**5.4** Where the Customer has a 30 day credit account, the Company will send the Customer a VAT invoice following completion of the provision of the Services. Where the Customer has no credit facility, the Company will send the Customer a VAT receipt following receipt by us of the Customer payment.

**5.5** The Customer agrees to notify the Company as soon as possible of any change in the Customer's bank account details. Should the Customer terminate the Service in accordance with this Agreement, it is the Customer's responsibility to terminate any Direct Debit with the Customer's bank.

### 6 NOTICES

**6.1** The Customer agrees to keep the contact details which the Customer has provided to the Company up to date. Any notice or other information to be served by the Company on the Customer, in accordance with this Agreement, will be validly sent in writing by either e-mail or

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first class post to the Customer's last known e-mail or postal address. Any notice sent by first class post will be deemed served two days after posting. Any notice sent by e-mail will be deemed served on the day that it is sent.

**6.2** Any notice to be served on the Company must be done so in writing and sent either by pre-paid first class post to the Company's registered office or by e-mail to sales@millerwaite.com or to such other addresses as may be specified by the Company to the Customer for this purpose from time to time.

I agree to the Specific Terms and Conditions and agree that the Customer information provided is correct. Following the audit or during initial configuration or during the term of the Agreement, in the event the amount of data backup required exceeds the allowance paid for, the Company reserves the right to charge the Customer the then current rate.

### Hardware Equipment:

Any hardware equipment supplied and installed by the Company on the Customer's premises in conjunction with the Service remains the property of the Company who will maintain the equipment in the event of equipment failure. It is the Customer's responsibility to ensure that the hardware equipment is maintained and not harmed, damaged or destroyed in any way, including physical damage and damage caused by excessive heat. Should damage of this nature occur, the Customer is liable for the cost of repair.

To be completed by an authorised person only.

Full Name (PRINTED): .....

Company (PRINTED): .....

Address: .....  
.....  
.....  
.....

Post Code: .....

Signed: .....

Position: .....

Dated: .....

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