

## LICENCE D'UTILISATION DES PROGICIELS SAGE X3

LE PRESENT CONTRAT, CI-APRES « LICENCE D'UTILISATION » A POUR OBJET DE DEFINIR LES CONDITIONS DANS LESQUELLES IL VOUS EST CONCEDE UNE LICENCE D'UTILISATION DES PROGICIELS SAGE X3. SAUF DISPOSITION D'ORDRE PUBLIC APPLICABLE, ET SAUF ACCORD CONTRAIRE AVEC SAGE OU UN REVENDEUR SAGE, AYANT LES DROITS SUFFISANTS POUR LES AMENDER, LES STIPULATIONS CI-APRES S'APPLIQUERONT ET VOUS VOUS ENGAGEZ EXPRESSEMENT A LES RESPECTER, SANS AUCUNE RESERVE.

Sage X3 EULA, English version [here](#)

### Sage North America

SI VOTRE REVENDEUR SAGE EST SAGE SOFTWARE, INC (USA), OU UN DE SES REVENDEURS AGREES, LES STIPULATIONS CONTENUS DANS LE « SAGE END USER LICENSE AND SUPPORT AGREEMENT FOR SAGE SOFTWARE, INC» S'APPLIQUERONT.

### Sage Australia

SI VOTRE REVENDEUR SAGE EST SAGE BUSINESS SOLUTIONS PTY LIMITED ("SBS") OR A RESELLER OF SBS, LES STIPULATIONS CONTENUS DANS LE « SAGE END USER LICENSE AND SUPPORT AGREEMENT FOR SAGE AUSTRALIA» S'APPLIQUERONT.

## DEFINITIONS

« Affilié » désigne toute entité que vous contrôlez au sens de l'article L 233-3 du Code de Commerce.

« Bon de Commande » désigne toute commande adressée à Sage ou un Revendeur Sage et expressément acceptée par Sage ou ledit Revendeur Sage.

« Configuration Agréée » désigne tous matériels, systèmes d'exploitation, middlewares, bases de données, et autres logiciels avec lesquels Sage certifie que le Progiciel fonctionne.

« Documentation », on entend la description des fonctionnalités et du mode d'emploi du Progiciel. Elle est fournie sous forme électronique en langue française. Toute autre documentation est exclue du cadre de la Licence d'Utilisation, notamment la documentation commerciale et la documentation de formation.

« DPI » désigne un Droit de Propriété Intellectuelle.

« Personnel Autorisé » désignent toute personne physique ayant avec le Client des liens de subordination et dûment informée par le Client du droit d'utilisation concédé sur le Progiciel.

« Revendeur Sage » désigne soit un partenaire de Sage, soit une société du Groupe Sage, dûment autorisée par Sage à distribuer les progiciels SAGE X3 par la signature d'un accord de distribution signé entre eux. Vous pouvez à tout moment vérifier auprès de Sage que les droits qui ont pu vous être consenti par votre Revendeur Sage n'excèdent pas les stipulations contenues dans l'accord de distribution en vigueur entre Sage et votre Revendeur Sage.

« Progiciel » s'applique aux progiciels développés avec la plateforme X3, sous forme de code objet, commercialisés par Sage sous les dénominations Sage X3, Sage HRM, Sage FA et comprenant leur support magnétique et leur Documentation associée et, le cas échéant, l'outil de développement et sa partie applicative, pour lesquels une licence vous est concédée.

« Vous » ou « Votre » désignent toute société ayant commandé un Progiciel, avec ou sans services associés, auprès de Sage SAS, RCS Paris 313.966.129, ci-après « SAGE » ou un Revendeur Sage.

### Article 1 : OBJET

A compter de l'acceptation par Sage ou par un Revendeur Sage de votre Bon de Commande, il vous est consenti une Licence d'Utilisation, non exclusive, d'utilisation du Progiciel telle que décrite dans ledit Bon de Commande.

### Article 2 : MISE EN GARDE

Il vous appartient de prendre toute mesure utile à l'utilisation du Progiciel et en particulier d'adapter les structures de

vos sociétés aux contraintes qu'impose un système informatique.

Il appartient au Client d'évaluer de façon extrêmement précise ses propres besoins, d'apprécier leur adéquation au Progiciel et de s'assurer qu'il dispose de la compétence particulière pour l'utilisation du Progiciel.

### Article 3 : DUREE

Votre licence vous est consentie pour la durée stipulée dans le Bon de Commande, soit pour la durée de protection des droits du Progiciel ou pour une durée limitée.

### Article 4 : ETENDUE DES DROITS CONCEDES

Vous reconnaissez que Sage reste l'unique titulaire de l'ensemble des DPI grevant le Progiciel et que la présente Licence d'Utilisation ne saurait en aucune manière être analysée comme une cession d'un DPI. Vous ne bénéficiez au titre de la Licence d'Utilisation que d'un simple droit d'utilisation.

#### 4.1 : Droit d'utilisation

Vous devrez utiliser le Progiciel uniquement pour vos besoins internes ou ceux des Affiliées, exclusivement sous forme de code objet et dans la limite des conditions de la présente Licence d'Utilisation.

En conséquence, le Progiciel doit être utilisé :

- conformément aux stipulations des présentes ainsi qu'aux prescriptions contenues dans la Documentation ;
- pour vos seuls besoins personnels et internes, ou ceux des Affiliés, par vos salariés, à l'exclusion de tout tiers ;
- par un Personnel Autorisé qualifié qui aura préalablement suivi une formation adaptée à l'utilisation du Progiciel ;
- sur une Configuration Agréée, et pour un Site donné tel que défini en Annexe (ci-après le « Site»). Si besoin était, il est précisé que vous ne devrez installer le Progiciel que sur le Site prévu entre vous et Sage ou votre Revendeur Sage. Vos Affiliées ne sont pas autorisées à installer le Progiciel sur leurs sites ou sur leurs environnements.

Si vous avez sollicité une licence en mode dit « multi-sociétés », à savoir que les Affiliés peuvent demander le bénéfice du droit d'utiliser le Progiciel dans les conditions stipulées aux présentes, vous vous engagez à :

- informer les Affiliées du contenu de la Licence d'Utilisation ;
- garantir le respect par les Affiliées des conditions stipulées dans la présente Licence d'Utilisation ;
- notifier sans délai la perte par une société du statut d'Affiliée ;

- fournir une déclaration sur l'honneur des Affiliées bénéficiant de la Licence d'Utilisation, et ce concomitamment à la contractualisation, puis chaque année jusqu'à la fin de la Licence d'Utilisation ;
- Il est précisé si besoin était que :
- si une Affiliée perdait son statut d'Affiliée, elle perdrait automatiquement les droits qu'elle pourrait détenir au titre de la Licence d'Utilisation ;
  - et qu'au titre d'une licence « multi-sociétés », une Affiliée bénéficie uniquement d'un droit de connexion à distance.

Le Progiciel pourra également être utilisé en mode dit « Service Bureau », à savoir que vous, et vous seule, pourrez utiliser le Progiciel aux fins de réalisation de prestations aux Affiliées sous votre seule responsabilité et dans la limite des droits acquis.

#### 4.2 : Copie de Sauvegarde

Le Client est autorisé à faire et à mémoriser une copie de sauvegarde unique du Progiciel à des fins de sécurité et à la conserver sur le Site. Toute copie de sauvegarde est de plein droit la propriété de Sage et devra mentionner toutes les réserves de propriété indiquées dans le Progiciel.

#### 4.3 : Droit de correction

Conformément aux termes de la loi, Sage se réserve, à titre exclusif, le droit de corriger les anomalies du Progiciel.

#### 4.4 : Droit de décompilation

Dans le cas où vous souhaiteriez procéder à la décompilation du Progiciel dans un but d'interopérabilité, les Parties conviendront ensemble et préalablement des modalités d'exécution de la prestation. Tout élément du Progiciel qui serait inclus dans un ensemble logiciel distinct reste assujéti aux stipulations de la Licence d'Utilisation.

#### 4.5 : Limite à l'utilisation du Progiciel

En acceptant la présente concession de droit d'utilisation sur le Progiciel, vous vous engagez à ne pas porter atteinte aux intérêts légitimes de Sage.

En conséquence, vous renoncez à tout type d'usage non expressément stipulé à la présente Licence d'Utilisation, et notamment :

- d'utiliser le Progiciel ou d'en effectuer une copie de sauvegarde, en dehors des conditions prévues aux présentes,
- de corriger ou de faire corriger par un tiers les éventuelles anomalies du Progiciel, sans l'accord préalable et écrit de Sage ou d'un Revendeur Sage dûment certifié,
- de consentir un prêt, une location, une cession ou tout autre type de mise à disposition du Progiciel ou de sa Documentation quel qu'en soit le moyen, y compris via le réseau Internet,
- de diffuser ou commercialiser le Progiciel, que ce soit à titre onéreux ou à titre gratuit, ou de l'utiliser à des fins de formation de tiers,
- de décompiler le Progiciel en dehors des conditions prévues aux présentes,
- d'adapter, de modifier, de transformer, d'arranger le Progiciel,
- de transcrire ou traduire dans d'autres langages le Progiciel.

Nonobstant toute clause contraire, tout manquement, de votre part ou de la part d'un Affiliée, devra être considéré comme un manquement grave autorisant Sage à résilier la Licence d'Utilisation, et ce sans préavis et sans préjudice de toute indemnisation auquel Sage pourrait prétendre.

### Article 5 : INSTALLATION DU PROGICIEL

L'installation du Progiciel sur la Configuration Agréée et conformément aux instructions fournies par Sage dans la

Documentation, est réalisée sous votre pleine et entière responsabilité,

Cette installation pourra, à la demande du Client, être effectuée par Sage ou un Revendeur Sage dûment certifié, dans le cadre d'un contrat de prestations distinct.

### Article 6 : GARANTIE

Quel qu'en soit le ou les faits générateurs, la responsabilité de Sage est limitée aux garanties stipulées au présent Article.

#### 6.1 : Garantie du Progiciel

Sage garantit que le Progiciel est conforme à sa Documentation. Cette garantie est valable trois (3) mois à compter de la date de livraison. En cas d'anomalies détectées durant cette période, Sage en assurera gratuitement et dans les meilleurs délais la correction, sous réserve que les éventuelles anomalies détectées soient reproductibles, et que leur existence ait été dûment signalée à Sage dans le délai de la garantie.

Sont expressément exclues de la garantie les prestations demandées à la suite d'une intervention ou d'une modification non autorisée, d'une erreur de manipulation ou d'une utilisation non conforme à la Documentation, ou encore à la suite d'une anomalie engendrée par une autre application.

La garantie ci-dessus est limitative et Sage ne garantit pas la correction de toutes les erreurs, ni l'aptitude du Progiciel à satisfaire vos objectifs individuels, ni son fonctionnement dans toute combinaison autre que celles indiquées dans la Documentation, ni son fonctionnement ininterrompu ou exempt d'erreur. A ce titre, les Parties écartent expressément au titre du présent contrat, et vous l'acceptez, l'application des dispositions légales relatives à la garantie pour les défauts ou vices cachés.

#### 6.2 : Garantie des supports informatiques

Sage garantit que les supports informatiques seront exempts de défauts dans les conditions normales d'utilisation. Cette garantie est valable trois (3) mois à compter de la date de livraison. Lorsque la garantie est mise en œuvre par vos soins, la responsabilité de Sage est limitée au remplacement gratuit des supports informatiques défectueux dans les meilleurs délais.

Sage n'est tenu à aucune autre garantie que celles ci-dessus énumérées au titre de la licence consentie.

### Article 7 : PROPRIETE ET GARANTIE DE PROPRIETE INTELLECTUELLE

#### 7.1 : Propriété

Sage garantit au Client qu'elle est titulaire soit des droits patrimoniaux sur le Progiciel et sa Documentation, soit d'une autorisation de l'auteur du Progiciel et qu'elle peut en conséquence librement accorder au Client le droit d'utilisation prévu aux présentes.

La concession du droit d'utilisation du Progiciel n'entraîne aucun transfert des droits de propriété à votre profit. Le Progiciel reste la propriété de son auteur, quels que soient la forme, le langage, le support du programme ou la langue utilisés.

Vous vous engagez à ne pas porter atteinte directement ou indirectement par l'intermédiaire de tiers, aux droits de propriété intellectuelle de l'auteur du Progiciel. A ce titre, vous maintiendrez en bon état toutes les mentions de propriété et/ou de copyright qui seraient portées sur les éléments constitutifs du Progiciel et de la Documentation ; de même, vous ferez figurer ces mentions sur toute reproduction totale ou partielle qui serait autorisée par Sage et notamment sur la copie de sauvegarde.

Certains des produits commercialisés par Sage intègrent des technologies tierces appartenant à d'autres éditeurs. Les droits concédés sur ces produits sont soumis au respect de différents droits et obligations qui s'imposent au Client. A défaut de respect de ces droits et obligations, Sage

s'autorise à prendre toute mesure nécessaire pour faire cesser les troubles observés.

## 7.2 : Garantie en contrefaçon

En cas de réclamation portant sur la contrefaçon par le Progiciel d'un droit de propriété intellectuelle en France, Sage pourra, à son choix et à ses frais, soit remplacer ou modifier la totalité ou une partie quelconque du Progiciel, soit obtenir pour le Client une licence d'utilisation, pour autant que vous ayez respecté les conditions suivantes :

- avoir accepté et exécuté l'intégralité de vos obligations au titre des présentes,
- avoir notifié à Sage, sous huitaine, par écrit, l'action en contrefaçon ou la déclaration ayant précédé cette action,
- que Sage soit en mesure d'assurer la défense de ses propres intérêts ainsi que les vôtres, et pour ce faire, que vous ayez collaboré loyalement avec Sage en fournissant tous les éléments, informations et assistance nécessaires pour mener à bien une telle défense.

Dans le cas où aucune de ces mesures ne serait raisonnablement envisageable, Sage pourra unilatéralement décider de mettre fin à la licence du Progiciel contrefaisant et vous rembourser les redevances acquittées pour ladite licence.

Sage n'assumera aucune responsabilité dans le cas où les allégations seraient relatives à :

- l'utilisation d'une version du Progiciel autre que la version en cours et non modifiée, si la condamnation aurait pu être évitée par l'utilisation de la version en cours et non modifiée,
- la combinaison et la mise en œuvre ou l'utilisation du Progiciel avec des programmes non fournis par Sage.

Les dispositions du présent article définissent l'intégralité des obligations de Sage en matière de contrefaçon de brevet et de droit d'auteur du fait de l'utilisation du Progiciel.

## Article 8 : RESPONSABILITE

Le Progiciel est utilisé sous vos seuls direction, contrôle et responsabilité.

Il vous appartient de réaliser sous votre responsabilité et sous votre direction des sauvegardes régulières de l'ensemble des données traitées directement ou indirectement par le Progiciel.

Dans le cadre des présentes, les Parties conviennent que Sage est soumis à une obligation de moyens.

Sage ne pourra en aucun cas être tenu pour responsable de toute contamination par tout virus de vos fichiers ou de ceux des Affiliées, et des conséquences éventuellement dommageables de cette contamination.

En aucun cas, Sage n'est responsable à votre égard ou à l'égard des Affiliées ou de tiers, des préjudices indirects tels que pertes d'exploitation, préjudices commerciaux, perte de clientèle, perte de commande, trouble commercial quelconque, perte de bénéfice, atteinte à l'image de marque, pertes de données et/ou de fichiers.

Nonobstant toute clause contraire, il est expressément convenu entre les Parties, et accepté vous que les stipulations de la présente clause continueront à s'appliquer en cas de résolution des présentes constatée par une décision de justice devenue définitive.

**LES PRESENTES STIPULATIONS Etablissent une REPARTITION DES RISQUES ENTRE VOUS, LES AFFILIEES ET SAGE. LE PRIX REFLETE CETTE REPARTITION AINSI QUE LA LIMITATION DE RESPONSABILITE DECRIE.**

**EN AUCUNE MANIERE UN REVENDEUR SAGE N'EST AUTORISE PAR SAGE A LIMITER, DE QUELQUE MANIERE QUE CE SOIT, LES LIMITATIONS DE RESPONSABILITE TELLES QUE STIPULEES AU PRESENT ARTICLE.**

## Article 9 : MESURES TECHNIQUES DE PROTECTION

### 9.1 : Mesure technique de protection

Vous êtes informé et accepté expressément que, conformément aux dispositions légales applicables : les Progiciels Sage comportent des dispositifs techniques nécessaires pour les services connectés de support et d'assistance, et qui notamment lors d'une connexion Internet, et pour les Progiciels concernés, vous permettent via un web-service, soit automatiquement, soit le cas échéant à l'initiative de Sage, d'envoyer à Sage des informations sur votre identification (Raison sociale, adresse, téléphone, Siret, adresse IP) l'identification de votre Progiciel (Code Client, Code et numéro de série du produit, Licence), et sur le contexte d'utilisation (Nombres d'utilisateur connectés, type d'application utilisées). Les informations obtenues par Sage grâce à ces dispositifs techniques sont également susceptibles d'être utilisées par Sage dans le cadre de lutte anti-contrefaçon, pour repérer et empêcher une éventuelle utilisation illicite ou non-conforme des Progiciels concernés.

Dans le cas où le Progiciel est équipé d'un tel dispositif nécessitant le cas échéant l'activation de votre part, vous vous engagez à activer cette fonction sur simple demande de Sage ou le cas échéant du Revendeur Sage et à fournir à Sage ou au Revendeur Sage le fichier contenant les informations décrites ci-dessus.

Tout contournement ou tentative de contournement de ces dispositifs techniques est prohibé et sera sanctionné conformément aux dispositions légales en vigueur.

### 9.2 : Audit

Outre la mise œuvre par Sage des Mesures Techniques de Protection visées au présent contrat vous vous engagez à fournir, sur demande de Sage ou du Revendeur Sage, une déclaration sur l'honneur attestant de l'utilisation conforme du Progiciel aux termes de votre Licence d'Utilisation.

Dans le cas où vous refuseriez d'activer ces dispositifs ou de fournir une telle déclaration, Sage ou le Revendeur Sage pourra procéder à un Audit sur Site.

En cas d'une utilisation dépassant les droits acquis de moins de 10%, un complément de redevances vous serait alors facturé.

En cas d'une utilisation égale ou supérieur à 10% des droits acquis, alors le complément de redevances facturé serait augmenté de 50% ainsi que des frais d'Audit engagés par Sage ou le Revendeur Sage.

Par ailleurs, en cas d'utilisation d'une fonction ou d'une option pour laquelle vous n'avez pas acquis de droits, Sage ou le Revendeur Sage facturera alors le complément de redevances conformément au tarif en vigueur.

En cas de non-paiement de la facture à échéance, Sage se réserve le droit de mettre fin à la présente Licence d'Utilisation, sans délai, après vous l'avoir signifié par lettre recommandée avec accusé de réception, ceci n'empêchant pas Sage de tout mettre en œuvre pour recouvrer ses créances.

Les informations vous concernant recueillies au cours des opérations d'Audit seront considérées comme des informations confidentielles et ne pourront être utilisées que pour les besoins de l'Audit et des régularisations éventuellement nécessaires.

## Article 10 : PRIX ET PAIEMENT

Vous vous engagez à payer les redevances telles que stipulées dans le Bon de Commande, aux délais convenus. Nonobstant toute clause contraire, tout manquement à une obligation de paiement, quelle que soit la somme en question, devra être considérée comme un manquement grave à vos obligations autorisant Sage, à sa seule discrétion et sans notification préalable, à résilier la Licence d'Utilisation, ceci sans préjudice des droits qu'elle pourrait faire valoir.

## Article 11 : CONFIDENTIALITE

Les Parties pourront, en application de la présente Licence d'Utilisation, avoir accès à des informations confidentielles de l'autre Partie. Sont des informations confidentielles les termes et redevance applicables à la Licence d'Utilisation, le Progiciel et toutes autres informations indiquées comme telles.

Ne sont pas des informations confidentielles celles qui, en l'absence de faute, se trouvent dans le domaine public; celles dont la Partie réceptrice était en possession avant leur communication, sans les avoir reçues de l'autre Partie; celles qui sont communiquées aux Parties par des tiers, sans condition de confidentialité; et celles que chaque Partie développe indépendamment.

La Partie à qui une information confidentielle sera communiquée en préservera le caractère confidentiel avec un soin non inférieur à celui qu'elle apporte à la préservation de sa propre information confidentielle, et ne pourra les communiquer ou les divulguer à des tiers, si ce n'est avec l'accord écrit et préalable de l'autre Partie ou dans la mesure éventuellement requise par la Loi. Les Parties conviennent d'adopter toutes mesures raisonnables pour s'assurer que les informations confidentielles ne soient pas communiquées à leurs employés ou contractants en violation du présent contrat. Les termes de cette obligation sont valables pendant toute la durée de validité du présent contrat et pendant les deux (2) ans qui suivront sa fin.

Tout document transmis par Sage dans le cadre de la Licence d'Utilisation reste sa propriété et sera restitué, sans délai, à première demande de Sage.

## Article 12 : SOURCES

Sage est adhérente à l'A.P.P. (Agence pour la Protection des Programmes) auprès de qui elle dépose régulièrement les programmes sources et leurs différentes mises à jour majeures.

## Article 13 : RÉSILIATION

### 13.1 : Résiliation pour faute

En cas de manquement de votre part à l'une quelconque des obligations mises à votre charge par le présent document, Sage pourra vous mettre en demeure de réparer ce manquement dans un délai maximum de trente (30) jours.

Si à l'issue de ce délai de trente (30) jours, le manquement n'a pas été réparé, Sage pourra résilier de plein droit la présente Licence d'Utilisation, sans préjudice de tous dommages et intérêts auxquels elle Sage pourrait prétendre, ceci n'empêchant pas Sage de tout mettre en œuvre pour recouvrer ses créances.

### 13.2 : Conséquences de la résiliation

Au plus tard huit (8) jours calendaires après la résiliation de la présente Licence d'Utilisation, vous devrez retourner à Sage le Progiciel et toutes les copies réalisées de la totalité ou d'une partie quelconque de ce Progiciel et de sa Documentation.

## Article 14 : EXPORTATION

Vous vous engagez à respecter strictement les lois et règlements en matière d'exportation en vigueur en France et aux États-Unis.

## Article 15 : DISPOSITIONS DIVERSES

**Déclarations et agréments nécessaires à l'utilisation du Progiciel** : Il vous appartient d'obtenir l'ensemble des autorisations administratives et réglementaires ou des agréments, éventuellement nécessaires à la mise en œuvre

du Progiciel. Il en est ainsi notamment des obligations liées à l'application de la Loi relative aux fichiers et aux libertés si des informations nominatives sont gérées au moyen du Progiciel objet des présentes.

**Relations entre les Parties** : Sage peut fournir également des services de maintenance et des prestations relatifs au Progiciel éventuellement convenus dans le cadre d'accords séparés. Tous les services fournis par Sage à ce titre font l'objet de propositions commerciales distinctes. Vous pouvez tout à fait contracter la présente Licence d'Utilisation sans faire l'acquisition de services de maintenance ou de prestations.

**Renonciation** : Le fait pour l'une des Parties de ne pas se prévaloir d'un manquement par l'autre Partie à l'une quelconque des obligations visées dans les présentes ne saurait être interprété pour l'avenir comme une renonciation à l'obligation en cause. Vous renoncez irrévocablement à toute demande, réclamation, droit ou action à l'encontre de Sage ayant trait à l'exécution de la présente licence et qui serait formulée plus de six (6) mois après le fait générateur, et de ce fait, vous renoncez irrévocablement à introduire toute action devant toute juridiction sur cette base à l'encontre de Sage ou de l'une quelconque des sociétés du groupe auquel elle appartient.

**Références** : Sauf instructions écrites contraires de votre part précisant que vous ne souhaitez pas figurer dans des documents, notifications ou publicités édités à des fins promotionnelles, un communiqué indiquant l'existence de la présente Licence d'Utilisation sera adressé à la presse afin d'en assurer la couverture médiatique.

Les parties reconnaissent et acceptent que le Progiciel est un produit destiné à être utilisé dans le monde entier, de telles sorte que la publicité, telle que décrite ci-dessus, est de nature à ne pas avoir de limitation territoriale. De plus, Sage, ou toute société du Groupe Sage, peut utiliser votre nom ou vos marques dans ses listes de référence, sur tout site Internet ou sur toute publicité. Vous pouvez à tout moment retirer l'autorisation stipulée au présent Article en nous adressant un message à l'adresse suivante : [MMECentralMarketingCampaigns@sage.com](mailto:MMECentralMarketingCampaigns@sage.com).

**Nullité partielle** : La déclaration de nullité ou d'inefficacité d'une quelconque stipulation de la Licence d'Utilisation n'entraîne pas de plein droit la nullité ou l'inefficacité des autres stipulations sauf si l'équilibre du contrat s'en trouve modifié.

**Incoterm** : Toute vente se fera selon l'incoterm EX WORKS « lieu de stockage de la société Sage en France ». Néanmoins, par dérogation, Sage organisera le transport et l'assurance des marchandises jusqu'au point de livraison pour votre compte. En outre, en dépit de l'incoterm utilisé, le dédouanement à l'exportation de France se fera par Sage à son nom et pour son compte.

## Article 16 : LOI ET ATTRIBUTION DE COMPETENCE

LE PRESENT ACCORD EST REGI PAR LA LOI FRANÇAISE. EN CAS DE LITIGE, COMPETENCE EXPRESSE EST ATTRIBUEE AU TRIBUNAL DE COMMERCE DE PARIS NONOBSANT PLURALITE DE DEFENDEURS OU APPEL EN GARANTIE, MEME POUR LES PROCEDURES D'URGENCE OU LES PROCEDURES CONSERVATOIRES, EN REFERE OU PAR REQUETE.

EN CAS D'OPPOSITION DE VOTRE PART A UNE REQUETE EN INJONCTION DE PAYER, COMPETENCE EXPRESSE EST EGALEMENT ATTRIBUEE AU TRIBUNAL DE COMMERCE DE PARIS.



## SAGE X3 EULA

THIS END-USER LICENSE AGREEMENT (“AGREEMENT”) CONTAINS TERMS AND CONDITIONS UNDER WHICH YOU ARE GRANTED A RIGHT OF USE RELATED TO THE SOFTWARE PACKAGE SAGE X3. TO THE EXTENT PERMITTED BY YOUR LOCAL LAW, AND UNLESS OTHERWISE AGREED BY SAGE OR A SAGE RESELLER DULY AUTHORIZED FOR SUCH AMENDMENT, THE TERMS AND CONDITIONS HEREINAFTER SHALL APPLY AND YOU EXPRESSLY ACKNOWLEDGE YOU ARE FULLY COMMITTED TO BE ABIDED BY SUCH TERMS AND CONDITION, WITHOUT ANY RESERVE.

### Sage North America

IF YOUR SAGE RESELLER IS SAGE SOFTWARE, INC. (USA) OR A RESELLER OF SAGE SOFTWARE, INC., THE “SAGE END USER LICENSE AND SUPPORT AGREEMENT FOR SAGE SOFTWARE, INC” CLICK [HERE](#) TO FIND THE TERMS AND CONDITIONS OF USAGE.

### Sage Australia

IF YOUR SAGE RESELLER IS SAGE BUSINESS SOLUTIONS PTY LIMITED (“SBS”) OR A RESELLER OF SBS, CLICK [HERE](#) TO FIND THE TERMS AND CONDITIONS OF USAGE.

### DEFINITIONS

“Affiliate” refers to any company controlled by you, as set forth in the provision of Section L 233-3 of French Commercial Code.

“Agreed Configuration” refers to any material, operating system, middleware, databases and other software packages with which SAGE certifies that the Software package functions.

“Authorised personnel” refers to anybody which is your employee and duly informed by you of the right of use granted on the Software package.

“Documentation” refers to the description of the functionalities and instructions for use of the Software package. It is provided in a French electronic format. Any other documentation is excluded from the framework of this Agreement, in particular commercial and training documentation.

“IPR” refers to Intellectual Property Rights.

“Order” refers to the purchase order on which you have sent to Sage or your Sage Reseller, provided that such order has been expressly accepted by Sage or such Sage Reseller.

“Sage Reseller” refers to either a Sage’s partner or a company of Sage Group duly authorised by Sage to distribute software packages Sage X3 according to terms and conditions expressly negotiated between the latter and Sage. You can, at any time, check rights granted to you by your Sage Reseller in order to verify that such terms and conditions are in accordance with rights to distribute Sage X3 your Sage Reseller is committed to fulfil.

“Software package” refers to the software packages Sage X3, in object code, edited by SAGE with the commercial name Sage X3, Sage HRM, Sage FA and comprising their magnetic media and associated Documentation and, if any, the development tool and its application part, for which a license is granted to you.

“You” and “your” refers to the individual or entity that has executed this agreement (“Agreement”) and ordered Sage programs and/or services from Sage SAS, a French Company registered in the Trade and Companies Registry of Paris under number 313.966.129, (“Sage”) or a Sage Reseller.

### Article 1 : PURPOSE

Upon Sage or Sage Reseller’s acceptance of your Order, you are granted a non-exclusive license to use the Software package as described in such order.

### Article 2 : WARNING

It belongs to you to take any necessary measure to the use of the Software package and more particularly to adapt your company’s process to a computing system.

It is your responsibility/liability to accurately evaluate your own requirements, to assess the compliance of the Software package with such requirements and to ensure that you

possess the necessary resources in order to use safely the Software package.

### Article 3 : TERM

The license is granted for the duration as set forth in your Order, either for the duration of the IPR or for a duration limited as indicated in such Order.

### Article 4 : RIGHTS GRANTED

You acknowledge that Sage remains the sole owner of any IPR relating to the Software package, in no circumstance this Agreement could be considered as an IPR assignment and you have no other benefit other than the right of use expressly granted through this Agreement.

#### 4.1 : Right of use

You shall have to use the Software package exclusively for you and your Affiliates own internal data processing purposes, exclusively in object code form and within the limits of the rights acquired.

As a consequence, the Software package must be used:

- in accordance with terms and conditions of this Agreement and the related Documentation;
- for your and your Affiliates own personal and internal business requirements, by your or your Affiliates’ employees, excluding use by or on behalf of any third party or any use for outsourcing or facilities management services,
- by qualified Authorised personnel trained to the use of the Software package;
- on an Agreed Configuration and on the implementation site as designated in the Order (hereafter, the “Site”). For avoidance of doubt, you undertake to install the Software package solely in one Site, as provided between you and Sage or your Sage Reseller. Your Affiliates are not allowed to install the Software package in their location or environment.

If you ask for the benefit of a “Multi-company” license in which your Affiliates could ask for the benefit of the right of use within term and condition of this agreement, you shall:

- draw the attention of your Affiliate which could use the Software package on the content of this Agreement;
- warrant Sage to the full respect of the term and conditions as set forth in by any of your Affiliates;
- promptly notify if any company lost its statute of Affiliates.
- undertake to provide a yearly attestation on the honour relating to the Affiliates which ask for the benefit of this Agreement, within its term and conditions, in parallel with the acceptance of your Order by Sage or your Sage Reseller, and moreover at any anniversary of this Agreement until its termination or expiration.

For avoidance of doubt,

- if an Affiliates lost its statute of Affiliate, it automatically lost any right of use relating the Software package as set forth in this Agreement; and
- by such "Multi-company" usage, your Affiliates are only allowed to connect remotely themselves to the Software package.

If you ask for the benefit of a "Service Bureau" license, you, and only you, could process the Software package to set provision of services for the benefit of the Affiliates, under your sole responsibility/liability and within term and conditions as set forth in this Agreement.

#### 4.2 : Backup copy

You may make and save a single backup copy of the Software package on the Site and solely for security purposes. Each backup copy remains the property of Sage and shall mention Sage's copyright as mentioned in the Software package.

#### 4.3 : Right of correction

Sage exclusively reserves the right to correct any errors in the Software package in accordance with the provisions of French law.

#### 4.4 : Right of decompilation

Should you wish to decompile the Software package for the purposes of interoperability, the Parties shall have agreed on terms and conditions of such decompilation. Each part of the Software package which would be included in other software packages shall remain ruled by this Agreement.

#### 4.5 : Limit to the Software package use

You undertake not to interfere with any legitimate interests of Sage and you are not committed to make any use of the Software package which is not expressly agreed according to this Agreement, in particular you undertake not to:

- use the Software package or make a backup copy thereof in any conditions other than those set forth in this Agreement,
- correct or cause a third party to correct any errors in the Software package, without the prior written agreement of Sage or a Sage Reseller duly certified,
- grant a loan, lease, assignment or make the Software package or its Documentation in any other way available, regardless of the medium, including via the Internet,
- distribute or market the Software package, whether or not for valuable consideration, or to use it for the purposes of the training of a third party,
- decompile the Software package other than in the conditions as set forth in this Agreement,
- adapt, modify, transform or arrange the Software package,
- transcribe / translate / localize the Software package.

Notwithstanding any provisions to the contrary, whatever is the breach of an obligation set forth in this section, by you or one of the Affiliates, it shall be considered as a material breach which allows Sage to terminate the right of use granted according to this Agreement, without any delay and without prejudice for Sage to any other rights or remedies.

### Article 5 : Installation of the software package

You are solely responsible for any installation of the Software package on an Agreed Configuration, such installation has to be processed in compliance with the instructions provided in the Documentation.

Such services could be carried out by Sage or a Sage Reseller duly certified in order to such services, at your request, on the basis of a specific services agreement to be negotiated between you and Sage.

### Article 6 : Warranty

Sage's entire liability shall be limited to the warranties mentioned above in this Section.

#### 6.1 : Software package warranty

Sage warrants that the Software package will operate in all material respects as described in the Documentation for a three (3) months period from the date of delivery. Sage warrants to you that the Software package complies with its Documentation. This warranty shall be valid for a three (3) months period from the date of delivery. If an error is detected during such period, Sage shall undertake its correction for free and under the shortest possible delay, provided that the potential identified errors are reproducible, and that Sage is duly informed of their existence within the warranty period.

Services required following an unauthorized intervention or modification, a handling error or any use not in conformity with the Documentation or following an error generated by another of applications are expressly excluded from the warranty.

The above warranty is limited and Sage does not guarantee the correction of all errors or the suitability of the Software package for your individual needs or its operation in any combination other than those indicated in the Documentation, or its uninterrupted or error-free operation. In this regard, the Parties expressly waive, under this Agreement, and the Customer accepts, application of the legal provisions in connection with the warranty for any error or latent defects.

#### 6.2 : Computer media warranty

Sage only warrants that the media on which the Software package is recorded is free of any defects in usual conditions of use. This warranty shall be valid for a ninety (90) days period from the date of delivery. Sage only warrants making its best efforts in order to replace for free the defective computer media under the best delay.

## Article 7 : INTELLECTUAL PROPERTY RIGHTS AND INFRINGEMENT WARRANTY

### 7.1 : Property

Sage warrants that it owns or is the licensee of the Software package and all IPR relating to the Software package and its Documentation, and that it is free to grant to you the rights under this Agreement.

The right to use the Software package does not transfer any property right to you. The Software package remains its author's property, whatever the form, programming language and medium of the Software package and whatever the language used.

You shall not directly or indirectly, act in any way likely to adversely affect the Software package or the IPR in the Software package. You shall take care of all proprietary notices and/or IPR mentioned on the Software package and the Documentation. You shall also reproduce Sage's proprietary notices upon any whole or partial reproduction of the Software package or the Documentation and, in particular, on any copy made for backup purpose.

Some of Software package could embed technologies belonging to other editors. The rights on such products are granted only under specific term and conditions. In case of breach of any of such term and conditions by yourself, you acknowledge that Sage shall have the right, at its sole discretion, to take any measure to make such breach over.

### 7.2 : Infringement Warranty

If the use of the Software package is the subject to a claim for intellectual property infringement in France, then Sage shall at its sole discretion and at its own cost either replace or modify in whole or in part of the Software package, or deal for the right for you to pursue the use of the Software package, provided you do the followings:

- you has accepted and performed all your obligations under this Agreement;
- you have notified Sage promptly by writing, not later than an eight (8) calendar days period after you received notice

of the infringement claim or allegation prior to such claim (or sooner if required by applicable law);

- you have given to Sage the sole control of the defense and any settlement negotiations; and
- you have given Sage any information, authority, and assistance Sage needed to defend against or settle the claim.

If the remedies set out above are not in Sage's opinion reasonably available, then you shall return the Software package which is the subject of any claim and Sage shall refund to you the corresponding license fees paid by you, and the Agreement shall immediately terminate in relation to this Software package.

Sage shall have no liability whether the allegations are related to:

- the use of a Software package in a different version than from the current and unmodified one,
- if the claim could have been avoided by the use of the current and unmodified version;
- or the use of the Software package in combination with any equipment or programs not supplied or approved by Sage.

This provision sets out Sage's entire liability in respect of IPR infringement arising from the use of the Software package.

#### **Article 8 : LIABILITY**

The Software package is used under the exclusive guidance, control and responsibility of you.

You undertake to have regular backups under your guidance and responsibility of all the data processed directly or indirectly by the Software package.

In no circumstance Sage shall be held liable for any virus contamination of your or Affiliates' files and any potentially harmful consequences of such contamination.

Within the framework of this Agreement, the Parties agree that Sage is only subject to a "best effort" obligation and that it will provide their services in a professional manner consistent with industry standards.

Neither Sage shall be held liable, by you, an Affiliates or any other third party, for any indirect losses such as business interruption, commercial losses, loss of customers and/or orders, any business disruption whatsoever, loss of profits, damage to brand image, loss of data and/or files, arising out of or related to this Agreement.

Notwithstanding any provisions to the contrary, any condition provided in this section shall continue to apply even in case of a termination of this Agreement arising from a final court decision.

**THIS SECTION IS PROVIDED IN CONSIDERATION OF THE RISK DISTRIBUTION BETWEEN YOU, THE AFFILIATES AND SAGE. THE PRICE REFLECTS THIS DISTRIBUTION AS WELL AS THE LIMITATION OF LIABILITY DESCRIBED.**

**IN NO CIRCUMSTANCE A SAGE RESELLER IS AUTHORISED BY SAGE TO CANCEL ANY LIMITATION OF LIABILITY AS SET FORTH IN THIS AGREEMENT.**

#### **Article 9 : DIGITAL RIGHTS MANAGEMENT / AUDIT**

##### **9.1 : Digital Rights Management**

You acknowledge that you have been informed, as applicable law where applicable, about Software package may include technological measures of protection (cookies or any other technologies) which could, for example when establishing network connection, and for such Software package, which allow Sage, with a web-service, either or not automatically, to collect data related to your IP addresses and related to its software (Customer Code, Product Code, License). Any data collected with such technical measures of protection could be used and processed for the purpose of fighting counterfeit, tracking or void any illegal handling or use other than that expressly provided for in this Agreement. If the Software package contains a measure of protection

which needs an action from you to be activated, you shall to activate without any delay such Software package function.

##### **9.2 : Audit**

More over activation of technical measures of protection, you shall provide, without any delay and on the first demand of Sage or the relevant Sage Reseller, a sworn statement attesting your use of the Software package is compliant with the rights granted.

If you refuse to activate such technical measure or protection or to provide such sworn statement, Sage and/or your Sage Reseller will be allowed to carry out an audit for the purpose of verifying if your use of the Software package is compliant with the rights granted.

Should such use is not compliant, but the difference existing between the fees due and the fees really paid is lesser than 10 %, additional fees shall be invoiced to you without any penalty or additional fee.

Should such use is not compliant, and the difference is equal or greater than 10%, you undertake to pay for an additional fee which will be increased by a penalty of 50% of the amount at stake, as well as the incurred audit fees.

These invoices are payable at invoice date.

Information gathered during the audit operations shall be considered as Confidential Information and shall be used only for the purposes of the audit and potential necessary regularizations.

#### **Article 10 : FINANCIAL TERMS & PAYMENT**

You must pay any fees as set forth in the Order in the due delays.

Notwithstanding any provisions to the contrary, any non-payment of any sums due to Sage under this Agreement shall be considered as a material breach from you, and you acknowledge that Sage shall have the right, at its sole discretion and without any previous formal notice, to terminate this Agreement, without prejudice to any other rights or remedies it might have.

#### **Article 11 : CONFIDENTIALITY**

Under this Agreement, the Parties may have access to confidential information belonging to the other Party. The terms and prices of this Agreement, the Software package and any other information stated as being confidential constitute confidential information.

Any information:

- which, without any defaulting, is in the public domain;
  - of which the recipient was in possession before disclosure thereof, without having received it from the other Party;
  - which is disclosed to the Parties by third parties, with no confidentiality conditions;
  - and which each Party develops independently;
- does not constitute confidential information.

The Party to which confidential information is disclosed shall keep such information confidential with the same care as it would expend on keeping its own information confidential and may not divulge or disclose such information to third Parties without the prior written agreement of the other Party or in so far as may be required by law. The Parties agree to take all reasonable measures to ensure that confidential information is not disclosed to their employees or contractors, in breach of this Agreement. The terms of this obligation shall remain in force from this Agreement terminates or expires, and for a two (2) years period after such termination or expiration.

All documents disclosed by Sage under this Agreement shall remain its exclusive property and shall be returned to it, without any delay, on its first demand.

#### **Article 12 : SOURCE CODES**

Sage is a member of the "Agence pour la Protection des Programmes" (French Program Protection Agency), to which it regularly deposits the source codes of the Software package and its major updates.

## Article 13 : TERMINATION

### 13.1 : Termination for breach

Sage may terminate this Agreement with a formal notice if you breaches this Agreement and fails to correct the breach within thirty (30) days following the notice specifying the breach, without prejudice to any compensation it may claim. Termination of this Agreement shall not limit Sage from pursuing other remedies available.

### 13.2 : Termination consequences

Within eight (8) clear days after the termination of this Agreement, you shall return to Sage the Software package and any copies it made of the Software package and its Documentation.

## Article 14 : EXPORT PROVISIONS

You agree to comply fully with all relevant export laws and regulations of France and the United States.

## Article 15 : GENERAL TERMS

**Declarations and consents necessary to the Software package use.** It is your responsibility to obtain all administrative and regulatory authorizations or consents as may be necessary for the implementation and use of the Software package and, in particular, to comply with any Data Protection regulation laws.

**Relations between Parties:** Sage can also provide maintenance as well as services related to the Software package which would be subject to specific agreement to be negotiated. As a result, you are able to use the Software package under term and condition of this agreement without any maintenance or additional services.

**Waiver:** Failure by either party to rely on a breach by the other Party of any of its obligations provided for in this Agreement may not be interpreted for the future as a waiver of the obligation at issue. You waive irrevocably any request, claim, or action linked to the performance of this license that would be brought against Sage more than six (6) months after the event at issue. As a consequence, you waive irrevocably the bringing of any action on this ground, against SAGE or any company of the group it belongs to, before any Court.

**References:** Unless you advise Sage in writing as indicated at the end of this paragraph that you do not wish to be included in promotional materials, notifications and advertisements, a brief announcement that you have

entered into this Agreement will be sent to relevant press organisations in order to gain PR coverage for both parties. The parties acknowledge and agree that the Software package is a global product so announcements may be made in any territory. In addition, we (or any company within the Sage group of companies) may include your name or trade mark in our list of customers on our corporate websites or printed materials. If at any time you do not want us to use your company name and/or trade mark in the ways described in this paragraph please advise us by sending an email to: MMECentralMarketingCampaigns@sage.com.

**Severability:** Should any provision of this Agreement be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided the economic balance of the Agreement remains unchanged.

**Incoterm:** Every sale will be made according to the incoterm EX WORKS "place of storage of the company Sage in France". Nevertheless, notwithstanding the provisions of such incoterm, Sage will, for you, organise the carriage and the insurance of the goods up to their place of delivery. Moreover, in spite of this incoterm, the customs clearance in case of exportation from France will be exercised by Sage in its name and for its own account.

## Article 16 : GOVERNING LAW AND JURISDICTION

**THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED IN ACCORDANCE WITH FRENCH LAW. IN THE EVENT OF ANY DISPUTE, THE COMMERCIAL COURT OF PARIS SHALL HAVE EXCLUSIVE JURISDICTION, NOTWITHSTANDING PLURALITY OF DEFENDANTS OR THE INTRODUCTION OF THIRD PARTIES, EVEN FOR SUMMARY OR CONSERVATORY PROCEEDINGS, BY APPEAL (RÉFÉRÉ) OR BY PETITION (REQUÊTE).**

**IF YOU LODGE AN OBJECTION TO AN ORDER TO PAY, THE COMMERCIAL COURT OF PARIS SHALL ALSO HAVE EXCLUSIVE JURISDICTION.**

## Article 17 : TRANSLATION

This document is an accurate translation of the original French document named "LICENCE D'UTILISATION DU PROLOGICIEL SAGE X3". In case of inconsistency or difference between these two documents, the original French document shall prevail.



IF YOUR SAGE RESELLER IS SAGE SOFTWARE, INC. OR A RESELLER OF SAGE SOFTWARE, INC., THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR USE OF THE SOFTWARE.

**SAGE END USER LICENSE AND SUPPORT AGREEMENT**  
**IMPORTANT—SCROLL THROUGH AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS**

1. **GRANT OF LICENSE.** Sage (“Sage” and other capitalized terms are defined below) grants You a limited, non-exclusive, non-transferable (except as set forth in **Section 3b** below), non-sublicensable license of the scope described in this Agreement to Use the Software only upon the following conditions:

- a. You or someone acting on Your behalf and at Your direction, such as Your Reseller has or will:
  - (1) Place an order with Sage for either an initial license or an upgrade (such as for more users, additional modules, etc.), or a Service Plan, and Sage has accepted such order and Enabled Use of the Software; and
  - (2) Accepted all of the terms and conditions of this Agreement either before or during installation of the Program. **YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND ALL OF ITS TERMS AND CONDITIONS BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORIZING A THIRD PARTY TO DO IT FOR YOU: (a) CLICKING “I AGREE” OR A SIMILAR AFFIRMATION, AS APPLICABLE, THAT APPEARS DURING INSTALLATION OF THE PROGRAM, OR (b) USING THE PROGRAM.**
- b. **IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT (IN ITS ENTIRETY AND WITHOUT CHANGE TO OR ADDITION TO ITS TERMS AND CONDITIONS), THEN YOU DO NOT HAVE A LICENSE TO USE THE SOFTWARE.**
- c. **If You acquire an On-Premise Subscription License**, You may Use the Software only for the subscription period for which Sage has received Your On-Premise Subscription License fee.
- d. **If You purchase an On-Premise License**, You may Use the Software only if You pay the required On-Premise License fee or fees when due.
- e. **If You access the Software under an Evaluation License** prior to Your purchase of an On-Premise Subscription License or an On-Premise License, You acknowledge and agree that (i) You shall Use the Software only for evaluation purposes before purchasing an On-Premise Subscription License or an On-Premise License to determine if the Software is suitable for Your business, (ii) the Software may be Used and/or operable only for a limited time, (iii) the Software is provided “**AS IS**” with no express or implied warranties, and (iv) upon expiration of the Evaluation License, Sage is under no obligation to return to You data You have entered into, that is processed by or is stored in the Software and it may become irretrievable, unrecoverable and/or otherwise unusable by You after the evaluation period ends. **Subsections 6a, 6b, and 6c of this Agreement do not apply to Evaluation Licenses.**

2. **DEFINITIONS.** As used herein, the following terms have the following meanings:

- a. **“Affiliate”** means any entity that controls You, that You control, or that is under common control with You, where “control” means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- b. **“Agreement”** means this Sage End User License and Support Agreement, and the Supplemental License Terms, all applicable license fee invoices, and Service Plan information as described in **Section 13**, which are incorporated herein by reference and made a part hereof.
- c. **“Customer Support”** means Software assistance You receive by phone, email, chat, access to on-line information, or by similar means because You purchased a Service Plan or an On-Premise Subscription License.
- d. **“Documentation”** means the Program specifications that are set forth in the Program help files and any release-related notes, guides or manuals Sage publishes specific to the current version of the Program.
- e. **“Enabled Use”** means that Sage has fulfilled the applicable software delivery process (whether by shipping tangible goods including recorded media containing the Software, enabling downloading of the Software, delivering activation codes for the Software, or otherwise), thereby enabling Use of the Software.
- f. **“Evaluation License”** means a time-limited license to Use the Software for evaluation purposes only to determine if it is suitable for Your business.
- g. **“Maintenance Software”** means Software that Sage delivers because You have purchased a Service Plan or an On-Premise Subscription License.
- h. **“On-Premise License”** means a license to Use the Software according to this Agreement until this Agreement terminates as described herein.
- i. **“On-Premise Subscription License”** means a license to Use the Software and a Service Plan according to this Agreement until the specified term or subscription period ends or Your license or this Agreement terminates as described herein.
- j. **“Program”** means the computer program, a part of which includes the install routine that when executed causes this Agreement to be displayed.
- k. **“Reseller”** means the independent third party reseller from whom You acquire the Software.
- l. **“Sage”** means the Sage company that distributes the Software to You or Your Reseller.
- m. **“Service Plan”** means a plan You purchase separately or acquire as part of the purchase of an On-Premise Subscription License providing You Customer Support and/or Maintenance Software for a specified period.
- n. **“Software”** means collectively, the Program and the Documentation, and any part thereof.
- o. **“Supplemental License Terms”** means the additional terms and restrictions posted by Sage at <http://na.sage.com/us/legal/eula> that are specific to the Program You license under this Agreement.
- p. **“Use”** means to install and execute the Program, provided that:
  - (1) You install the Program only on a computer system that You own or only on a computer system not owned by You if You will be the only party with access to the installed Program; and
  - (2) You execute the Program during the term of Your license or subscription (i) for its intended purpose solely in connection with the management of the business that You and Your Affiliates conduct, and (ii) solely to the extent of any and all applicable limitations (whether as to specific modules or other parts of the Program, or number of production or backup server computers) set forth in this Agreement; and
  - (3) You may make only a reasonable number of backup copies of the Program solely for the purpose of reinstalling the Program, if reinstallation becomes necessary; and

- (4) You may make one copy of the Program for Use in a testing environment solely for testing purposes; and,
- (5) You may make and install one copy of the Program at a disaster recovery site for Your Use only for so long as a disaster or other emergency prevents You from Using the Program at Your original installation site.

q. “You” or “Your” means or refers to the company or person that Sage has registered as the licensee for the Software.

**3. LIMITS OF LICENSE.** The license contained in this Agreement does not include the right to perform, and You shall not perform, any of the following:

- a. Except as expressly set forth in **Section 2p above**, making any copy of the Software, except as an essential step in Your licensed Use thereof.
- b. Distributing any copy of the Software (whether by renting, leasing, lending, sublicensing, time-sharing, or otherwise), except that, if Sage consents in writing, which consent will not be unreasonably denied, You may transfer the Software but only to a purchasing party after the close of a sale of either Your entire business, or all, or substantially all, of the assets of Your business, provided that the purchasing party reads and accepts (in writing to Sage) the terms and conditions of this Agreement, the purchasing party agrees to other reasonable transfer requirements, and You do not retain a copy of the Software.
- c. Using the Software for personal, family, household, or other non-business purposes.
- d. Altering, modifying, translating, decompiling, disassembling, or reverse-engineering the Software or creating any derivative work based upon the Software.
- e. Removing or obscuring any copyright or trademark notices from the Software.
- f. Using the Software in excess of (i) the limitations set forth in this Agreement, and (ii) the number and types of users, seats or licenses You purchase or rightfully acquire. Use of the Software in excess of the number and type of licenses You purchased constitutes a material breach of this Agreement and (1) You agree to pay to Sage the additional license or subscription fees due for the unpaid use calculated in accordance with the applicable Sage retail price list in effect at the time payment is made, and (2) failure to make the foregoing payment within 30 days of Sage’s invoice date is also a material breach of this Agreement and results in the automatic termination of this Agreement without notice.

#### **4. ADDITIONAL RESTRICTIONS.**

- a. Any report-writing software contained within the Program may be subject to a restriction such that its use may be limited to accessing only the data that is created by, or used by, the Program;
- b. You may not Use, export, re-export or otherwise transfer the Software in violation of any domestic or foreign laws or regulations in effect from time to time in the jurisdiction in which You are a resident or in which the Software is Used. You represent and warrant that You are not located in, under the control of, or a national or resident of, any restricted country or of any entity or person designated as restricted.

**5. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided 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. The manufacturer is Sage SAS for Sage X3, Sage Hibernia Limited for Sage CRM, and Sage Software, Inc. for all other Sage-manufactured products. The Sage address in the United States is 6561 Irvine Center Drive, Irvine, California 92618; the Sage address in Canada is 13888 Wireless Way, Suite 120, Richmond, British Columbia, V6V 0A3, Canada.

#### **6. LIMITED WARRANTIES AND DISCLAIMERS.**

a. Software. Sage warrants that, during the one hundred and eighty (180)-day period (the “**Software Warranty Period**”) that commences on the date that Sage Enabled Use of the Software (whether for an initial license or for Maintenance Software), the Program, when properly Used, shall perform substantially in accordance with the Documentation. Sage does not warrant or represent that Your Use of the Software will be uninterrupted or error-free. If You report to Sage in writing within the Software Warranty Period any nonconformity between the Documentation and the Program (a “**Warranty Claim**”), and if Sage is able to replicate and verify that such nonconformity exists, Sage shall make commercially reasonable efforts to correct such nonconformity and, if successful, shall supply You with such correction at no additional cost to You. If such efforts are unsuccessful and the nonconformity is material, Your sole remedy for a breach of the warranty described in this **section 6a**, shall be as follows:

- (1) If You acquire an On-Premise License, then (1) except for Maintenance Software, You may terminate this Agreement, discontinue Use of and return all copies You have of the Software, and Sage will ensure that You receive a refund of the license fee You paid and credit for any license fee You owe for the Software; and (2) for Maintenance Software, You may terminate Your Service Plan, discontinue Use of and return all copies You have of the Maintenance Software to Sage, and Sage will ensure that You receive a refund of or credit for the fee You paid for the purchase of the terminated Service Plan.
- (2) If You acquire an On-Premise Subscription License, You may terminate this Agreement, discontinue Use of and return all copies You have of the Software to Sage, and Sage will ensure that You receive a refund of the On-Premise Subscription License fees You paid in the six (6) months preceding the Warranty Claim.

b. Customer Support. If You are entitled to receive Customer Support as part of a Service Plan, Sage warrants that while Your Service Plan is in effect and if You have paid all required Service Plan fees, Sage will use qualified personnel to provide You Customer Support in a professional manner consistent with industry standards. Your sole remedy under this **subsection 6b** is limited to Sage’s re-performance of the Customer Support services giving rise to Your claim.

c. With respect to any media by which You may have received Your installation copy of the Program, Sage warrants that the media is free of defects in materials and workmanship under normal use for the Software Warranty Period. Your sole remedy under this **subsection 6c** is limited to replacement of defective media.

d. Evaluation License. SOFTWARE PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED “**AS IS**” WITH NO IMPLIED OR EXPRESS WARRANTIES. **Subsections 6a, 6b, and 6c** do not apply to Evaluation Licenses.

e. OTHER THAN THE EXPRESS, LIMITED WARRANTIES STATED IN THIS **SECTION 6**, SAGE AND ITS SUPPLIERS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTEES, OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS, IMPLIED, AND STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, CONDITIONS, OR GUARANTEES (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (IV) ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE. YOU UNDERSTAND AND AGREE THAT: (1) THE

UTILITY OF A BUSINESS MANAGEMENT COMPUTER PROGRAM DECREASES AS TECHNOLOGY EVOLVES AND THE BUSINESS ENVIRONMENT CHANGES, (2) YOU ARE FREE TO DECIDE, AND ARE RESPONSIBLE FOR DECIDING, WHEN TO UPGRADE YOUR SOFTWARE, AND (3) SAGE DISCLAIMS ANY RESPONSIBILITY TO DELIVER LATER-RELEASED SOFTWARE OR OTHERWISE RENDER ANY CUSTOMER SUPPORT SERVICES UNLESS INCLUDED IN A SERVICE PLAN THAT YOU HAVE PAID FOR IN FULL.

f. Other Limitations. Sage will have no responsibility under these limited warranties for any Software or media that has been modified, lost, stolen, or damaged by accident, abuse, or misapplication. No employee, agent, or representative of Sage, nor any reseller (including Your Reseller) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this Agreement, and You may not rely on any such unauthorized warranty. You acknowledge and agree that You have chosen Your Reseller, and that such Reseller is an independent party and not an agent of Sage.

## 7. EXCLUSIONS OF AND LIMITATION OF LIABILITY.

a. You acknowledge Your understanding that software is inherently complex and may not be free from errors and that You have been advised to verify the work produced by the Program. Neither Sage nor its suppliers shall be liable for any special, indirect, incidental, consequential, or punitive damages resulting from any defect in the Software or media, even if Sage has been advised of the possibility of such damages. This means Sage is not responsible or liable for damages or costs incurred as a result of loss of time, loss of data, loss of anticipated profits, lost opportunity cost, or loss of use of the Software, nor for damages or costs incurred in connection with obtaining substitute software, receiving support services under Your Service Plan, claims made against You by others, or similar costs. IN NO EVENT SHALL SAGE'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, YOUR SERVICE PLAN, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED (i) THE LICENSE FEE ACTUALLY PAID BY YOU TO PURCHASE AN ON-PREMISE LICENSE, (ii) THE ON-PREMISE SUBSCRIPTION FEES ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM, OR (iii) THE FEES ACTUALLY PAID BY YOU TO PURCHASE OR RENEW THE ANNUAL SERVICE PLAN IN EFFECT WHEN THE CLAIM AROSE. You acknowledge and agree that this Agreement allocates risk between You and Sage as authorized by applicable law and that the pricing of Sage products reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

b. You acknowledge that unless You and Sage agree in writing for Sage to provide software implementation services to implement the Program at Your place of business, You are responsible for engaging a qualified party to provide implementation services for You on terms You negotiate. You also acknowledge that You are responsible for independently investigating the skills and qualifications of such party to ensure that they provide You with the level of skill and service Your business requires. You agree that Sage shall have no liability whatsoever for any failure associated with such implementation services, even if the party You engage is an authorized or certified Reseller, consultant, or installer of Sage products.

8. **JURISDICTIONAL RIGHTS.** This Agreement gives You specific legal rights, and You may also have other rights, which vary from jurisdiction to jurisdiction. 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 those sections of this Agreement may not apply to You.

9. **TERM AND TERMINATION.** This Agreement takes effect from the date You accept it as set forth in **Section 1a(2)**, and continues until terminated in accordance with this Section.

a. If You acquire an On-Premise License, You may terminate this Agreement at any time, at which point the licenses granted to you in this Agreement will terminate.

b. If You acquire an On-Premise Subscription License:

(1) The "Initial Term" will run for one (1) year unless You are offered and select a shorter or a longer subscription term when You acquire Your initial On-Premise Subscription License; in such event, the shorter or longer subscription term will be Your Initial Term. Your Initial Term will automatically continue to renew thereafter for the same subscription term (Your "Renewal Term"). Payment is required for the full length of Your Initial Term and each Renewal Term and is non-cancellable and non-refundable (except as described in **Subsections 6a(1), 6a(2), 11c**, and in **subsection (2)** immediately below), even if You cancel or choose not to renew Your On-Premise Subscription License.

(2) You may choose not to renew Your On-Premise Subscription License or to reduce the number of Your On-Premise Subscription License users by providing Your non-renewal or reduction request to Sage at [Subscriptionchanges@sage.com](mailto:Subscriptionchanges@sage.com). Your request must include Your Sage customer number, Your company name, a company contact name, a company phone number or email, and the name of the Software.

i. If Your Initial Term or current Renewal Term is less than one year, Sage must receive Your request at least five (5) business days before the end of the Initial Term or current Renewal term in order for the request to take effect at the end of that term (the "Termination Date"). Requests received less than five (5) business days before the end of an Initial Term or current Renewal Term will take effect at the end of the next Renewal Term.

ii. If Your Initial Term or current Renewal Term is one year or more, Sage must receive Your request at least one month prior to the end of Your Initial Term or current Renewal Term in order for the request to take effect at the end of that term (the "Termination Date"). If Your non-renewal or reduction request is received less than one (1) month before but by the end of the Initial Term or the current Renewal Term, Sage may charge and You agree to pay a processing fee equal to the pro-rated cost for one month of Your subscription term to process Your request. Requests received after the Termination Date will be applied to the following Renewal Term.

(3) You shall be responsible (i) for all On-Premise Subscription License fees and processing fees that fall due before or after the Termination Date, and (ii) for retrieving Your data from the Software within 30 days after the Termination Date.

c. If You acquire an Evaluation License, the Evaluation License will expire at the end of the evaluation period provided by Sage or Your Reseller, or if no evaluation period end date is provided, Your Evaluation License shall expire thirty (30) days after Sage or Your Reseller makes the Software available to You for evaluation.

d. Notwithstanding the foregoing, this Agreement and the license granted to You will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement, including but not limited to the payment of all license fees when due. **THE SOFTWARE MAY CONTAIN TECHNOLOGY THAT ALLOWS SAGE TO TERMINATE YOUR USE OF THE PROGRAM OR CONVERT YOUR ACCESS TO THE PROGRAM TO READ-ONLY IN THE EVENT YOU MATERIALLY BREACH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, YOUR FAILURE TO PAY LICENSE FEES WHEN DUE. IF**

**SAGE CONVERTS YOUR ACCESS TO READ-ONLY, YOU WILL CONTINUE TO HAVE ACCESS TO DATA YOU ENTERED BEFORE THE CONVERSION BUT WILL NOT BE ABLE TO ENTER NEW DATA.**

e. Upon termination or expiration of Your Evaluation License, and (i) if You purchase an On-Premise License or an On-Premise Subscription License, You acknowledge and agree that this Agreement (excluding **Sections 1e** and **6d**) shall govern Your continued Use of the Software, or (ii) if You do not purchase an On-Premise License or an On-Premise Subscription License, You shall comply with Sage or Your Reseller's instructions for returning the Software. If no instructions are provided, You shall follow the return and destroy instructions set out in **Section 9f**, below.

f. Within thirty-five (35) days after the termination or expiration of Your On-Premise License, Your On-Premise Subscription License, or this Agreement, You shall return the Software to Sage and destroy all other Software copies in Your possession or control.

g. Any provision in this Agreement which when reasonably read as intended to survive the termination of this Agreement shall survive, including without limitation, the disclaimer of warranties and limitations of liability.

**10. DISPUTE RESOLUTION, WAIVER OF COLLECTIVE OR CLASS ACTION, CHOICE OF LAW, STATUTE OF LIMITATIONS, AND LANGUAGE.** 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 pursuant to this **Section 10** and the applicable rules of either J.A.M.S./Endispute or the National Arbitration Forum in effect at the time the claim is filed. 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. This Agreement shall be governed by the laws of (i) the State of California if primary Use of the Software occurs in any jurisdiction other than Canada, or (ii) the Province of British Columbia if primary Use of the Software occurs in Canada, each without regard to the conflict of laws provisions thereof or to the United Nations 1980 conventions on the International Sale of Goods. The parties have expressly requested and required that this Agreement and all other related documents be drawn up in the English language. ***Les Parties conviennent et exigent expressément que ce Contrat et tous les documents qui s'y rapportent soient rédigés en anglais.*** ANY CLAIM OR CAUSE OF ACTION, REGARDLESS OF FORM, MUST BE BROUGHT NO MORE THAN ONE (1) YEAR AFTER IT AROSE, OTHERWISE THE CLAIM OR CAUSE OF ACTION SHALL BE BARRED, EXCEPT THAT THE FOREGOING LIMITATION AND THE ARBITRATION PROVISION SHALL NOT APPLY TO THE ENFORCEMENT BY SAGE OF YOUR PAYMENT OBLIGATIONS AND ANY SAGE INTELLECTUAL PROPERTY RIGHTS. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**11. INDEMNIFICATION.**

a. If You receive notice of any claim that Your use of any part of the Software infringes any third party's intellectual property right in a patent, copyright, or trade secret (an "**Indemnity Claim**"), Sage shall defend and shall indemnify and hold You harmless by paying any resulting costs and damages finally awarded by a court with respect to any such Indemnity Claim provided that You:

- (1) Notify Sage in writing promptly upon becoming aware of the Indemnity Claim,
- (2) At Sage's request and expense, give Sage such information and assistance as is reasonable under the circumstances, and
- (3) Give Sage the right to settle the Indemnity Claim in Sage's sole discretion and at Sage's expense.

b. This indemnification does not extend to any Indemnity Claim arising from the combination of the Software with other elements not under Sage's sole control, or arising from any part of the Software that You or a third-party modify, or that incorporates specifications, designs or formulas that You provide. If You are prevented from Using the Software because of an actual or claimed infringement, then at Sage's option, Sage shall promptly either obtain for You the right to continue Using the affected part of the Software, replace or modify the affected part of the Software so that it becomes non-infringing, or if none of the foregoing alternatives are possible after Sage exercises commercially reasonable efforts, You may terminate this Agreement and Your Service Plan, and Sage shall ensure that:

- (1) If You acquire an On-Premise License, You receive a refund or credit for (i) the Service Plan fee You incurred to purchase or renew Your most recent Service Plan, and (ii) a pro rata portion of the On-Premise License fees You incurred for the purchase of Your initial On-Premise License and all upgrades, which pro rata portion will be determined on the basis of the remaining period of a useful life of (5) five years, where the five-year useful life begins on the date You purchase Your initial license.
- (2) If You acquired an On-Premise Subscription License, You receive a refund of or credit for any prepaid but unused portion of the On-Premise Subscription License fees paid by You for the Software.

c. THIS **SECTION 11** SETS OUT SAGE'S ENTIRE FINANCIAL LIABILITY FOR ANY INDEMNITY CLAIM.

**12. AUDIT RIGHTS.** With or without prior notice, Sage may audit Your Use of the Software to ensure that You comply with the terms and conditions of this Agreement. If an audit reveals that You have underpaid fees or owe fees to Sage, Sage will invoice You for the underpayment or amount due based on the Sage price list in effect at the time the audit is completed.

**13. SERVICE PLAN.** Service Plan information for Sage products is posted by Sage from links appearing at <http://na.sage.com/us/support> (or a successor website for the Service Plan information) and related web pages that describe the Service Plan features for the Program You license or the subscription You purchase.

**14. FEE INCREASES.** Sage may increase its license and other fees at any time without notice so fees due for new or additional Software license or subscription purchases may be more than a previous purchase.

a. If You purchased an On-Premise Subscription License, Sage may not increase On-Premise Subscription License fees more than once in any 12 month period following Your initial purchase by more than:

- (1) Ten percent (10%), or
- (2) The percentage increase in the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, [1982]-[84]=100 (as published by the United States Bureau of Labor Statistics) for the 12 months preceding the date a price increase is announced for On-Premise Subscription Licensees generally, whichever is greater.

Sage will notify You of a price increase at least 60 days before the increase takes effect.



b. You are responsible for providing Sage with Your most current contact and billing information. You may provide updates to Your contact information to Sage at [Subscriptionchanges@sage.com](mailto:Subscriptionchanges@sage.com) and updates to Your billing information to Sage at [card.expirations@sage.com](mailto:card.expirations@sage.com). You agree that, so long as Your On-Premise Subscription License is active, Sage may, on a monthly basis, automatically bill the same credit card or bank account You provide to Sage.

**15. SAGE ADVISOR—PRODUCT ENHANCEMENT PROGRAM.** If You have not previously opted out of participating in our Product Enhancement Program (“PEP”) You may automatically be enrolled in PEP when You install the Program. Through PEP, Sage collects information on Your hardware and how You use and when You install the Program and its in-product Help and services. This information helps Sage identify trends and usage patterns to improve the quality of the products and services Sage offers.

**16. AUTOMATIC UPDATES.** The Software may contain automatic update technology, a feature used to provide Maintenance Software such as bug fixes, patches, enhanced functions, missing plug-ins, and new versions. This feature cannot be disabled. This feature will: (i) connect to Sage or service provider computer systems over the Internet, (ii) use Internet protocols to recover standard computer information in order to determine whether Maintenance Software is required, and (iii) automatically download and install, or prompt You to download and/or install, current Maintenance Software. By installing the Software initially, You consent to the transmission of standard computer information and the automatic downloading and installation of Maintenance Software.

**17. ENTIRE AGREEMENT AND SEVERABILITY.** This Agreement represents the complete and exclusive understanding between You and Sage regarding the Program and Your Service Plan and supersedes any prior purchase order, confirmation, advertising, representation, or other communication. This Agreement may not be modified except by a written agreement signed by You and an authorized Sage representative. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision which conforms to applicable law and embodies as closely as possible the original intent of the parties.

*You hereby give Sage permission to send You information regarding Sage products and services by various delivery methods, including by facsimile and email.*

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**IF YOUR SAGE RESELLER IS SAGE BUSINESS SOLUTIONS PTY LIMITED ("SBS") OR A RESELLER OF SBS, THE FOLLOWING TERMS AND CONDITIONS GOVERN YOUR USE OF THE SOFTWARE**

YOUR USE OF THIS SOFTWARE IS SUBJECT TO YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY CHANGE FROM TIME TO TIME, AT THE SOLE DISCRETION OF SBS. YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND ITS TERMS AND CONDITIONS BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORISING A THIRD PARTY TO DO IT FOR YOU:

- (1) CLICKING "I ACCEPT" OR A SIMILAR AFFIRMATION THAT APPEARS DURING INSTALLATION OF THE SOFTWARE; OR
- (2) USING THE SOFTWARE.

IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT, THEN YOU DO NOT HAVE A LICENSE TO USE THE SOFTWARE AND YOU MUST NOT INSTALL, COPY, DOWNLOAD, ACCESS OR OTHERWISE USE THE SOFTWARE.

TERMS AND CONDITIONS

**1. DEFINITIONS**

Unless the context otherwise requires, the following terms have the meanings set out in this clause.

1.1 **Agreement** shall mean these terms and conditions and any documentation expressly incorporated in this Agreement by reference, including any amendments or supplementary agreements specifically referencing this Agreement and effected as amendments as provided in this Agreement.

1.2 **Associated Company** shall mean a company, corporation or other entity, 50% or more of whose outstanding securities are owned or controlled, directly or indirectly, by You, or are under Your common control. Such entity shall be deemed to be an Associated Company only so long as it remains under such ownership or control.

1.3 **Documentation** shall mean the manuals for use with the Software and any other necessary installation instructions or any part thereof in printed or electronic format.

1.4 **Licence** means sub-licence between SBS and You.

1.5 **Licensed Materials** shall mean collectively the Software and all Documentation.

1.6 **Location** shall mean the file server(s) where the Software is in Use.

1.7 **Loss** means loss of profit, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, loss of or spoiling of data, and any indirect or consequential loss or damage.

1.8 **SAGE** means any direct or indirect subsidiary of The Sage Group plc or any Sage group company, including but not limited to SBS and Sage SAS.

1.9 **Sage SAS** means a simplified joint stock company incorporated under French law, Registered with the Trade and Companies Registry of Paris under number B 313 966 129, who are authorised to license this Software to You.

1.10 **SBS** means Sage Business Solutions Pty Ltd. (ABN 24 091 525 898) of Level 6, 67 Albert Avenue, Chatswood, NSW 2067, Australia, who are authorised to sub-license this Software to You.

1.11 **Software** shall mean the computer programs licensed to You pursuant to this Agreement, including any upgrades, modifications, enhancements or corrections to it, in machine readable object code form, and/or any part of it and any back-up copies made in accordance with this Agreement.

1.12 **Software Assurance** shall mean our annual maintenance subscription plan for You to keep Your systems reliably running on the latest Sage software without paying full price for upgrades. Each time we release a new version of software, we will automatically send it to You.

1.13 **Use** shall mean transmitting any portion of the Software for processing and/or compiling, executing or interpreting any machine instructions contained in the Software and/or displaying any portion of the Software in connection with processing of such machine instructions. Other technical expressions shall have the meanings commonly attributed to them in the computer and information technology industry.

1.14 **You or Your** shall mean the entity or individual that SBS has registered as the sub- licensee for the Software.

**2. LICENCE**

2.1. Unless terminated under clause 15, SBS grants You a non-exclusive, non-transferable, licence to Use the Licensed Materials solely on the following terms:

2.1.1. To Use the Software for the licensed number of users. Subject to SBS's prior written consent which shall not be unreasonably withheld, the right to Use may be temporarily extended to back-up machines during any period when the machines

become inoperative due to malfunction, maintenance or hardware modification, provided such back-up machine is under Your control;

2.1.2. In the case of Software operating on a Local Area Network or Wide Area Network, You may Use the Software on file server(s) with more than one associated workstation, provided that a licence fee is paid for each user that has network access to the Software from the file server;

2.1.3. You may make up to two back-up copies of the Software for disaster recovery or security purposes only, provided that all back-up copies bear the same copyright, trade mark notices and other proprietary legends as the original copy.

### **3. PROHIBITED USES**

3.1. You must not reproduce or distribute copies of the Licensed Materials to others or electronically transfer the Software other than for Use as permitted by this Agreement, or as agreed in writing by SBS.

3.2. The Licensed Materials contain intellectual property and know-how, system design and proprietary information which is the exclusive and valuable property of SAGE, and You must not disclose to others any such information or materials relating to the design, construction, operation or issue of the Licensed Materials except in connection with the Use permitted by this Agreement, or as agreed in writing by SBS.

3.3. You must not:

3.3.1 decompile, reverse engineer, or otherwise reduce the Software to human readable form, modify, alter, adapt or translate the Software;

3.3.2 hire out, lease, loan, resell, distribute, grant sub-licences, network or create derivative works based on the Licensed Materials or any part of it, nor use the same to act as a bureau or for time-sharing use;

3.3.3 make any copies of the Software except as expressly permitted in this Agreement;

3.3.4 use the Licensed Materials for personal, family, household, or other non-business purposes; or

3.3.5 use the Software in excess of the licenses purchased or acquired by You.

3.4 You acknowledge that the Licensed Materials, related product logos and product names are the trademarks or are otherwise proprietary to SAGE, and You may not remove any such notices or product identification or attempt to cover or disfigure the same.

3.5 If SBS, in its sole discretion, determines that any of the above restrictions or uses have been breached, then SBS reserves the right to take whatever action it deems necessary and without further notice to protect and enforce its rights, including but not limited to prosecution of intellectual property infringements, injunctive relief, compensation in the form of damages or an account of profits, and the payment of legal costs.

### **4. CONTROL AND AUDIT OF THE SOFTWARE AND EQUIPMENT**

4.1 You must follow all reasonable instructions given by SBS from time to time, in connection with the Use of the Software. You shall permit SBS or its authorised representative at reasonable times, to verify that the Use of the Software and Licensed Materials are in accordance with the terms of this Agreement, and if requested by SBS, You must certify in writing to this effect.

4.2 If the Software is equipped with a function allowing the recording of audit data, You must activate this function at SBS's request and provide SBS with the file containing this information. Such file shall constitute the certification referred to in clause 4.1.

4.3 You shall permit SBS or its authorised representatives to carry out a Location audit.

4.4 If the file or the Location audit reveals any excess Use of greater than 10% of over and above the licensed rights, an additional fee shall be payable by You plus all audit fees incurred. If You use a function or option for which You do not have licensed rights, You must pay the additional fee as per the current price list including the applicable Software Assurance fees. Software Assurance fees will be calculated from the date the usage first occurred. Except as provided in clause 4.5, You agree that SBS nor its authorised representatives shall be liable.

4.5 Any information obtained during the audit shall be treated as confidential information, provided however SBS may disclose any relevant information to the extent required for the recovery of any additional fee payable by You.

4.6 You may transfer ownership, provided that You obtain SBS's prior written consent, which consent will not be unreasonably withheld, the Software to a purchasing party after the close of a sale of either Your entire business, or all, or substantially all, of the assets of Your business, provided the purchasing party reads and accepts (in writing to SBS) the terms and conditions of this Agreement.

4.7 Where You specifically request to store the Software on other equipment for the purpose of back-up and security, and it is desired to have more than one copy of the binaries of the system, and if the back-up is at a different address to the Location, You must advise SBS in writing prior to installing the back-up system. The total number of users must not exceed the Licensed number. The additional licensed system must not be used for processing other than for back-up purposes under any circumstances.

### **5. INTER-GROUP TRANSFERS**

5.1 In certain circumstances which must be agreed in advance and in writing by SBS and on payment of SBS's then prevailing fee, You may be entitled to assign Your rights and obligations under this Agreement to any other Associated Company of Yours, or if You are disposing of as part of a going concern to another company. For the avoidance of doubt, You shall not be entitled to assign or otherwise dispose of its rights and obligations under this Agreement if You have a petition presented or pass a resolution

for winding up or have a receiver or administrator appointed over Your assets or make an arrangement with Your creditors to go into liquidation or, if You being an individual, commits any act of bankruptcy with Your creditors.

## **6. INTELLECTUAL PROPERTY RIGHTS**

The copyright and all other intellectual property rights of whatever nature in the Licensed Materials and any modifications or changes of it and all patents, trademarks and copyrights relating to it are and shall always remain the property of SAGE, and any rights in any other work prepared or carried out by SAGE shall vest in SAGE on creation of it. You shall notify SBS immediately if You become aware of any unauthorised Use of the Licensed Materials in whole or in part by any third party.

## **7. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

7.1 If any Licensed Materials are held or alleged to infringe any intellectual property rights, SBS shall have the option, at its own expense, to (i) obtain for You the right under the relevant intellectual property right to continue using the affected Licensed Materials; (ii) replace the relevant part of the Licensed Materials with a non-infringing replacement; (iii) modify the relevant part of the Licensed Materials to make it non-infringing; or (iv) refund the depreciated value of the relevant part of the Licensed Materials, and accept return of the same. SBS shall, however, at all times use reasonable endeavours to ensure that You are left with operational and functionally equivalent Licensed Materials.

7.2 SBS shall not be liable for any loss, costs or damages if a claim of infringement of intellectual property rights arises out of; (i) compliance with Your requests; (ii) incorporation of Your or a third party's product or products in or with any Licensed Materials; (iii) modification of any Licensed Materials after delivery by SBS; (iv) Your Use of other than the latest supported releases of any Licensed Materials (if such release has been made available to You); (v) Your Use of any Licensed Materials after receiving notice that the relevant Licensed Materials infringe any intellectual property rights; or (vi) any other fault, action or inaction by You. In this regard, you agree to indemnify and hold SBS (which shall include SAGE, any of its employees, agents, contractors, and officers harmless from any claim or demand (including legal and other professional costs) made by a third party owing to or arising out of Your breach of this Agreement or Your infringement of any applicable laws or rights of a third party.

7.3 You must immediately inform SBS of any claim or action brought against You on the issue of infringement of any copyright and other intellectual property rights in the Licensed Materials.

7.4 The preceding clauses 7.1 to 7.4 (inclusive) states the entire liability of SAGE to You in respect of infringement or alleged infringement by the Licensed Materials of the intellectual property rights of any third party.

## **8. CONFIDENTIALITY**

8.1 You acknowledge that the Licensed Materials contain intellectual property rights and know-how, system design and proprietary information which is the exclusive and valuable property of SAGE. Subject to clauses 8.2 and 8.3, You undertake to treat as confidential all information contained or embodied in the Licensed Materials and in any specifications of it made available to You and shall not, except as provided in clauses 8.2 and 8.3, disclose the same in the whole or in part to any third party without the prior written consent of SBS.

8.2 You shall be permitted to disclose aspects of the Licensed Materials to Your personnel only to the extent necessary and to those personnel having a legitimate need to know. You are responsible for ensuring that such personnel are made aware, prior to such disclosure, that the Licensed Materials are the confidential material of SAGE, and that such personnel owe a duty of confidence to SAGE.

8.3 The provisions of clause 8.1 shall not apply to:

- (i) information in the public domain otherwise than by breach of this Agreement; and/or
- (ii) information already in the possession of the receiving party prior to disclosure with right to use; and/or
- (iii) information received from a bona fide third party without breach of obligation to other party to it.

8.4 You must effect and maintain reasonable security measures to safeguard the Licensed Materials from theft, or access by any person other than as expressly permitted in this Agreement.

8.5 The obligations contained in this clause 8, as to confidentiality, shall not merge and survive any termination under this Agreement, howsoever caused.

## **9. UPGRADE SYSTEM OVERLAP**

9.1 Where You have acquired an upgrade from one licensed product to another then, save for a permitted period of dual processing, Your license for the product being replaced shall terminate on the first Use of the upgrade. The maximum period allowed for such dual processing is three (3) months from the date in the month in which the upgrade was acquired.

9.2 SBS reserves the right to require You to remove unlicensed versions of the Licensed Materials, at any time after the end of the dual processing period.

## **10. FEES AND PAYMENTS**

10.1 Software Assurance is mandatory with the initial license purchase. The terms and conditions are set out in the Software Assurance terms and conditions of Sale.

10.2 No right to Use the Licensed Materials shall be granted until SBS has received full payment for the Licensed Materials when due.



## 11. WARRANTY

11.1 SBS warrants that it has the right to grant the sub-licences to Use the Software as set out in this Agreement.

11.2 You acknowledge that the Software consists of standard modules which have not been prepared to meet Your particular requirements and it is therefore Your responsibility to ensure that the Software meets Your requirements. You further acknowledge that You are not relying on any statements or representations regarding the Licensed Materials that are not expressly provided in this Agreement.

11.3 Subject to clause 12.1, SBS cannot always foresee or anticipate technical or other difficulties. These difficulties may result in loss of data or other software or service interruptions. For this reason, **YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SOFTWARE IS AT YOUR OWN RISK. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SBS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SBS MAKES NO WARRANTY THAT :**

- (I) **THE SOFTWARE WILL MEET YOUR REQUIREMENT;**
- (II) **THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE;**
- (III) **THE QUALITY OF THE SOFTWARE, SERVICE, INFORMATION OR OTHER MATERIAL OBTAINED BY YOU OR ANY USER IN CONNECTION WITH THE USE OF THE SOFTWARE WILL MEET YOUR EXPECTATION.**

The above disclaimer is made subject to Your rights under the *Competition and Consumer Act 2010* (Cth).

## 12. LIMITATION OF LIABILITY

12.1 To the maximum extent permitted by law, in cases of any losses (as defined) not otherwise excluded by a term of this Agreement, SAGE or SBS's total liability (whether in contract, tort, including negligence or otherwise) under or in connection with this Agreement, or based on any claim for indemnity or contribution will not exceed the total cost of the software paid by You to SBS.

## 13. RELEASE OF SOFTWARE

13.1 You acknowledge and accept that the Licensed Materials will not be released until SBS has received all completed order forms and signed agreements.

13.2 If You change Your trading name such change must be communicated, in writing, by You to SBS, and accompanied by a copy of the Change of Name Certificate.

13.3 An administrative charge may be levied by SBS for changing Your trading name in accordance with clause 13.2.

## 14. FORCE MAJEURE

14.1 SBS shall not be liable to You for delays and failures in performance resulting from causes beyond our reasonable control, including but not limited to, acts of god, labour disputes, disturbances, material shortages, or rationing, riots, acts of war, government regulations, communication or utility failures, computer disruptions due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.

## 15. TERMINATION

15.1 This Agreement shall terminate automatically if You fail to comply with any of the provisions of this Agreement and do not rectify such non-compliance within fifteen (15) days of SBS's written notice to it. This Agreement shall also terminate automatically if You have a petition presented or pass a resolution for winding up or shall have a receiver or administrator appointed over Your assets or make an arrangement with Your creditors to go into liquidation, or if You being an individual commits any act of bankruptcy or compounds with Your creditors, then SBS may, without prejudice to any other rights or remedies, and without being liable to You for any loss or damage which may result, give written notice to You terminating this Agreement with immediate effect.

15.2 Upon termination for any cause whatsoever, You shall lose all rights to Use the Licensed Materials and shall forthwith destroy the same and all copies made in whole or in part for any purpose, and shall complete a purge certificate, which shall be provided to You by SBS, and return it to SBS confirming that all such copies have been destroyed.

## 16. GENERAL

16.1 Subject to clause 5, You may not assign, transfer or otherwise dispose of Your rights and obligations under this Agreement without the prior written consent of SBS. SBS may assign this Agreement without Your consent.

16.2 This Agreement sets out the entire agreement and understanding between the parties relating to the subject matter contained in this Agreement and supersedes all previous communications, representations, proposals or prior agreements between them.

16.4 All notices required to be given under this Agreement by one party to the other shall be sufficiently given if in writing and delivered or sent by hand or pre-paid letter, or facsimile transmission confirmed by post, to the registered address of the other party, or such other address as the parties may notify from time to time. Notices shall be deemed to have been received on

delivery if delivered by hand, or on the third day after posting if sent by pre-paid letter or, if given by facsimile transmission, upon transmission.

16.5 The headings of the clauses of this Agreement are provided for convenience only and shall not contribute to or affect the meaning or construction of the said clauses.

16.6 This Agreement may only be amended by written agreement between SBS and You.

16.7 If any term, part or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable as being contrary to applicable law or public policy, such provision shall to the extent reasonably possible be construed in a manner so as to be enforceable and the remaining provisions thereof shall remain in full force and effect and in no way be affected, impaired or invalidated, except by reason thereof the fundamental nature of this Agreement is thereby frustrated.

16.8 The construction, validity and performance of this Agreement shall be governed by the laws of New South Wales, and each party hereto submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

V 27-07-2015