

## **SAGE HANDITAX CLOUD SERVICE AGREEMENT**

THIS AGREEMENT GOVERNS YOUR ACCESS TO AND USE OF OUR SERVICE UNTIL **30 JUNE 2021**.

YOU ACCEPT THIS AGREEMENT AND ITS TERMS EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, BY EXECUTING THIS AGREEMENT OR BY PROCEEDING TO USE OUR SERVICES TO WHICH THIS AGREEMENT RELATES.

IF YOU DO NOT AGREE WITH OR OTHERWISE ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE OUR SERVICES.

SAGE RESERVES THE RIGHT TO CHANGE THIS AGREEMENT WITHOUT YOUR CONSENT TO FACILITATE CHANGED OPERATING CONDITIONS. WITHOUT LIMITING THE GENERALITY OF THIS DISCLAIMER, OPERATING CONDITION IS WHERE IT AFFECTS YOUR ABILITY TO ACCESS OUR SERVICE. ALL OTHER CHANGES TO THIS AGREEMENT WILL REQUIRE THE CONSENT OF THE OTHER PARTY IN WRITING.

### **1. Definitions and interpretation**

1.1 The following definitions apply to this Agreement:

**"Agreement"** these terms and conditions executed by you, Exhibit A and any other documentation or terms and conditions referred to within any of them;

**"Affiliate"** any company, that company's parent or any subsidiaries of any such parent company;

**"Collateral"** our digitally available content, for example online user guides, help and training materials, that we make available from time to time in respect of the Service;

**"Content"** information developed by us or publicly available sources and provided to you and as more fully described in the Collateral;

**"Customer Data"** any data and information inputted by you into the Sage HandiTax Cloud Services or collected and processed by you using the Sage HandiTax Cloud Services, excluding Content;

**"Documentation"** means all manuals, handbooks, and other materials, whether in hard copy or electronic form, in relation to the Sage HandiTax Cloud Services or its use, and provided by Sage;

**"Force Majeure Event"** any circumstance not within a party's reasonable control including, for example, acts of God, fire, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil commotion, war, sanctions, embargo, law or act by government, labour or trade dispute, non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to

rely on this clause) or interruption or failure of utility service, network or internet service provider;

**"Information"** all information disclosed by a party (**"Disclosing Party"**) to the other party (**"Receiving Party"**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Information includes Customer Data. Our Information includes the Services and Content. Information of each party includes the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Information excludes information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use or reference to the Disclosing Party's Information;

**"Malicious Code"** code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;

**"Sage HandiTax Cloud Services"** the services that you or your Affiliate's procure from us under this Agreement and as detailed at the point you access the Service excluding Content;

**"Standard Support"** means email support.

**"User"** an individual who you authorise to use a Sage HandiTax Cloud Services and for who you have issued a user identification and password. Users may include your own employees, consultants, contractors and agents, and third parties with which you transact business;

**"we" "us" "our" "Sage"** the Sage entity is Sage Software Australia Pty Ltd (ABN 40 071 007 326);

**"you" or "your"** means the person, company or other legal entity accepting this Agreement and, where Sage HandiTax Cloud Services are procured on behalf of an Affiliate "you" and "your" shall include such Affiliate as the context requires;

1.2 In the event of any conflict between these terms and conditions and Exhibit A, then Exhibit A shall prevail in respect of the applicable third party Service.

### **2. SAGE HANDITAX CLOUD SERVICES OUR RESPONSIBILITIES**

- 2.1 We will:
- 2.1.1 make the Sage HandiTax Cloud Services and Content available to you and your Affiliates pursuant to this Agreement ; and
- 2.1.2 provide our standard support for the Sage HandiTax Cloud Services to you at no additional charge, and/or upgraded support if purchased; and
- 2.1.3 use commercially reasonable efforts to make our online Sage HandiTax Cloud Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which we shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Sydney time), and (ii) any unavailability caused by a Force Majeure event.
- 2.2 We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer's Personal Information or Data, as described in the Collateral. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer's Personal Information or Data by our personnel except (a) to provide the Sage HandiTax Cloud Services and prevent or address service or technical problems, (b) as compelled by law in accordance with section 8.2.2 below, or (c) as you expressly permit in writing.
- 2.3 Where, as part of the Sage HandiTax Cloud Services, we process on your behalf data or information classified as personal information, we shall process such personal information in accordance with our privacy policy. In particular, we shall:
- 2.3.1 maintain technical and organisational security measures and safeguards sufficient to comply with [Sage's Privacy Policy](#); and
- 2.3.2 act only on instructions from you in respect of such personal information and to process it only for the purposes of: (a) performing our obligations under this Agreement and to prevent or address service or technical problems; and (b) as compelled by law in accordance with section 8.2.2; or (c) as you expressly permit in writing.
- 2.4 We will be responsible for the performance of our personnel (including our employees and contractors) and their compliance with our obligations under this Agreement, except as otherwise specified within this Agreement.
- 3. USE OF SERVICES AND CONTENT**
- 3.1 Sage HandiTax Cloud Services are only available to professional accounting and tax practices with a bona fide requirement for services of the nature of those that we provide. We reserve the right to terminate this Agreement without further liability to you where we have reasonable grounds to suspect that your use of the Sage HandiTax Cloud Services is for competitive purposes (including competitive monitoring, assessment or otherwise).
- 3.2 Sage HandiTax Cloud Services and Content are subject to usage limits. Unless otherwise specified:
- 3.2.1 a User's password must not be shared; and
- 3.2.2 a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Sage HandiTax Cloud Service and Content. You shall:
- 3.3 remain responsible for Users' and your Affiliate's compliance with this Agreement;
- 3.3.1 be responsible for the accuracy, quality and legality of Customer Data and the means by which you acquire Customer Data;
- 3.3.2 use commercially reasonable efforts to prevent unauthorised access to or use of Sage HandiTax Cloud Services and Content, and notify us promptly of any such unauthorised access or use;
- 3.3.3 use Sage HandiTax Cloud Services and Content only in accordance with the Collateral and applicable law, regulation and professional body recommendations.
- 3.4 You shall not:
- 3.4.1 make any Sage HandiTax Cloud Service or Content available to, or use any Sage HandiTax Cloud Service or Content for the benefit of, anyone other than you, your Affiliates or Users;
- 3.4.2 sell, resell, license, sublicense, distribute, rent or lease any Sage HandiTax Cloud Service or Content, or include any Sage HandiTax Cloud Service or Content in a service bureau or outsourcing offering;
- 3.4.3 use a Sage HandiTax cloud Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- 3.4.4 use a Sage HandiTax Cloud Service to store or transmit Malicious Code;
- 3.4.5 interfere with or disrupt the integrity or performance of any Sage HandiTax Cloud Service or third-party data contained therein;
- 3.4.6 attempt to gain unauthorized access to any Content, Sage HandiTax Cloud Service or its related systems or networks;
- 3.4.7 permit direct or indirect access to or use of any Sage HandiTax cloud Service or Content in a way that circumvents a contractual usage limit;
- 3.4.8 copy Content or the Sage HandiTax Cloud Service or any part, feature, function or user interface except as expressly permitted by this Agreement;
- 3.4.9 frame or mirror any part of any Sage HandiTax Cloud Service or Content other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Collateral;
- 3.4.10 access any Sage HandiTax Cloud Service or Content in order to build a competitive product or service; or
- 3.4.11 reverse engineer any Sage HandiTax Cloud Service (to the extent such restriction is permitted by law).

3.5 If we are required by a licensor to remove Content or receive information that Content provided to you may violate applicable law or third-party rights, we may so notify you and in such event you will promptly remove such Content from your systems.

#### **4. PRIVACY**

4.1 You warrant that in providing personal information to Sage, you have complied with your legal obligations under the Privacy Act, 1988 (Cth) including the Australian Privacy Principles in Schedule 1 of that Act; and

4.2 Sage warrants that it will only use such personal information disclosed by you for the purpose of providing you with the Sage HandiTax Cloud Services under this Agreement. You can read Sage's Privacy Policy which is available on our Website at <https://www.sage.com/au/footer/privacy-policy>

4.3 The parties agree to comply with local data protection and privacy laws. In addition, pursuant to the General Data Protection Regulation (GDPR) (EU) 2016/679, the parties further agree to comply with the terms set out in <https://www.sage.com/au/data-processing-addendum>

#### **5. PROPRIETARY RIGHTS AND LICENSES**

5.1 Subject to the limited rights expressly granted under this Agreement, we and our licensors reserve all of right, title and interest in and to the Sage HandiTax Cloud Services and Content, including all related intellectual property rights. No rights are granted to you other than as expressly set out in this Agreement.

5.2 We grant to you a worldwide, limited-term license to use Content pursuant to this Agreement and the Collateral.

5.3 You grant us and our Affiliates a worldwide, limited-term license to host, copy, transmit and display Customer Data, and program code created by or for you using a Sage HandiTax Cloud Service, as necessary for us to provide the Sage HandiTax Cloud Services in accordance with this Agreement. Subject to the limited licenses granted within this Agreement, we acquire no right, title or interest under this Agreement in or to Customer Data.

5.4 You grant to us and our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Sage HandiTax Cloud Services any suggestion, enhancement request, recommendation, correction or other feedback provided by you or users relating to the operation of the Sage HandiTax Cloud Services.

5.5 You grant to us a non-exclusive non-transferable right to use your name and logo in our marketing or promotional material during the term of this Agreement for the purpose of identifying you as a customer.

#### **5.6 CONFIDENTIALITY**

5.7 Each party shall treat the other's Information and the content of this Agreement as confidential and will not at any time copy, use or disclose to any person the other's Information, except as permitted by this Agreement or as otherwise authorised by the other party in writing.

5.8 Either party may disclose the other's Information:

5.8.1 to that party's employees, contractors, officers, representatives, advisers or Affiliates (as applicable) who need to know such information for the purposes of carrying out a party's obligations under this Agreement. Each party will ensure that their respective employees, contractors, officers, representatives, advisers and Affiliates to whom the Information is disclosed comply with this section 8; and

5.8.2 as may be required by law, court order or any governmental or regulatory authority. Where legally permissible the party required to disclose Information of the other shall attempt to provide the other party with prior notice of such disclosure together with any reasonable assistance (at the other party's cost) as that other party may require to avoid such disclosure.

#### **6. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

6.1 Each party represents that:

6.1.1 it has validly entered into this Agreement and has the legal power to do so; and

6.1.2 that the person entering into this Agreement on its behalf has the power to bind that party and its Affiliates (as the case may be).

6.2 We warrant that (a) we will not materially decrease the overall security of the Sage HandiTax Cloud Services during the term, (b) the Sage HandiTax Cloud Services will perform materially in accordance with the applicable Collateral, (c) we will not materially decrease the functionality of the Sage HandiTax Cloud Services during the term, and (d) the Sage HandiTax Cloud Services and Content will not introduce Malicious Code into your systems.

6.3 You acknowledge that you have sought independent professional advice in relation to the Sage HandiTax Cloud Services and Documentation, and that you are not relying on the advice or judgment of Sage. To the extent permitted by law, Sage HandiTax Cloud Services and Documentation are provided on the basis that :

6.3.1 We are not responsible for the result of any actions taken by you in reliance on information in the Sage HandiTax Cloud Services and Documentation, nor any error or omission in the Sage HandiTax Cloud Services and Documentation.

6.3.2 We are not engaged in and do not represent by providing the Sage HandiTax Cloud Services and Documentation that they are providing any legal, accounting, professional or other advice or services; and

6.3.3 We are not responsible for the results of any actions taken by you in reliance of information provided by the ATO.

6.4 Sage HandiTax Cloud makes use of the Australian Taxation Office (ATO) Standard Business Reporting (SBR) gateway. We have no control over the ATO's SBR gateway and recommend that you review the ATO's terms and conditions including privacy and data collection practices.

6.5 EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE WITHIN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.6 CONTENT IS PROVIDED "AS IS," AND NO REPRESENTATIONS, CONDITIONS OR WARRANTIES ARE GIVEN IN RESPECT OF CONTENT.

## 7. MUTUAL INDEMNIFICATION

7.1 We shall defend you against any claim, demand, suit or proceeding made or brought against you by a third party alleging that the use of a Sage HandiTax Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights, and will indemnify you from any damages, legal fees and costs finally awarded against you as a result of, or for amounts paid by you under a court-approved settlement of such claim, provided you (a) promptly give us written notice of such claim; and (b) give us sole control of the defence and settlement of such claim (except that we may not settle such claim unless it unconditionally releases you of all liability); and (c) give us all reasonable assistance at our expense. If we receive information about an infringement claim related to a Sage HandiTax Service, we may in our discretion and at no cost to you (i) modify the Sage HandiTax Service so that it no longer infringes,; or (ii) obtain a license for your continued use of that Sage HandiTax Service in accordance with this Agreement; or (iii) terminate your subscriptions for that Sage HandiTax Service upon 30 days' written notice and refund you any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defence and indemnification obligations do not apply to the extent such claim arises from Content, your breach of this Agreement or your continued use of the infringing element of the Sage HandiTax Service after we have notified you not to use it.

7.2 You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that Customer Data, or your use of any Sage HandiTax Service or Content in breach of this

Agreement, infringes such third party's intellectual property rights or violates applicable law, and will indemnify us from any damages, attorney fees and costs finally awarded against us as a result of, or for any amounts paid by us under a court-approved settlement of such claim, provided we (a) promptly give you written notice of such claim; (b) give you sole control of the defence and settlement of such claim (except that you may not settle such claim unless it unconditionally releases us of all liability), and (c) give you all reasonable assistance, at your expense.

This section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section 10.

7.3

## 8. LIMITATION AND EXCLUSION OF LIABILITY

8.1 NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU TO US GIVING RISE TO THE LIABILITY IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT, STRICT LIABILITY OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

8.2 IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY DAMAGE CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS, LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8.3 NOTHING IN THIS SECTION 11 SHALL BE DEEMED TO EXCLUDE OR LIMIT LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW.

## 9. TERM AND TERMINATION

9.1 This Agreement commences on the date you first accept it and continues until all Sage HandiTax Cloud Services have expired or otherwise terminated.

9.2 A party may terminate this Agreement:

- 9.2.1 upon 30 days written notice to the other party of a material breach if such breach remains unremediated at the expiration of such period; or
- 9.2.2 where permitted by applicable law, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Where termination is not permissible under applicable law for this reason we will require such assurances as we may reasonably request concerning payment to continue your access to the applicable Sage HandiTax Cloud Services.
- 9.3 This Agreement may be terminated or suspended immediately without notice to you where you are in breach of the terms and conditions of our hosting provider listed in Exhibit A.
- 9.4 To avoid any loss or inconvenience, please ensure that you possess physical copies of all data inputted into Sage HandiTax Cloud Service.
- 9.5 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 9.6 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 10. ANTI-BRIBERY AND CORRUPTION**
- 10.1 Each party will and will procure that persons associated with them:
- 10.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the "**Relevant Requirements**");
- 10.1.2 not engage in any conduct which would constitute an offence under any of the Relevant Requirements;
- 10.1.3 not do, or omit to do, any act that may lead the other party to be in breach of any Relevant Requirements;
- 10.1.4 promptly report to the other party any request or demand for any undue financial or other advantage received by it in connection with this Agreement;
- 10.1.5 have and maintain in place during the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate.
- 11. GENERAL PROVISIONS**
- 11.1 Neither party may assign any of its rights or obligations under this Agreement without the other party's prior written consent (not to be unreasonably withheld) except that either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favour of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, we will refund to you any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.2 Other than our hosting partner referred to in Exhibit A, there are no other third-party beneficiaries under this Agreement. Except as expressly set out in this Agreement, a person who is not a party to this Agreement will have no rights to enforce any terms of this Agreement.
- 11.3 This Agreement constitutes the entire understanding between the parties with respect to their subject matter and supersedes all prior agreements, negotiations and discussions between the parties relating to them. Each party agrees that it has not relied on any representations or statements in entering into this Agreement which are not set out expressly in it, except this does not exclude a party's liability for fraud.
- 11.4 If a court or similar body decides that any wording in this Agreement cannot be enforced, that decision will not affect the rest of this Agreement. If the unenforceable wording could be enforced if part of it is deleted, the parties will treat the relevant part of the wording as if deleted.
- 11.5 Each party is an independent contractor and neither party will represent itself as agent, servant, franchisee, joint venturer or legal partner of the other.
- 11.6 If a party fails to, or delay in, exercising any rights under this Agreement, that will not mean that those rights cannot be exercised in the future.
- 11.7 This Agreement is drafted in English. If this Agreement is translated into any other language, the English language text will prevail. The parties have expressly requested and required that this Agreement and all other related documents be drawn up in the English language.
- 12. NOTICES, GOVERNING LAW AND JURISDICTION**
- 12.1 Except as otherwise specified in this Agreement, all notices, permissions and approvals shall be in writing and shall be deemed to have been given upon: (i) personal delivery, the second business day after mailing; (ii) the second business day after sending by confirmed facsimile, or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to you shall be addressed to the

relevant billing contact designated by you. All other notices to you shall be addressed to the relevant Sage HandiTax Cloud Services system administrator designated by you. For us notices should be sent as follows:

Entity	Address
Sage Software Australia Pty Ltd (ABN 40 071 007 326)	Level 11, The Zenith Tower B, 821 Pacific Highway Chatswood NSW 2067.

arising out of or in connection with this Agreement or the legal relationships established by it. Updated 22 June 2020.

Accepted by:

Company / Firm Name: \_\_\_\_\_

Customer Name: \_\_\_\_\_

Signature: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Sage Authorised:

Signature: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

12.2 This Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of the Sage entity that you are contracting with as follows:

Entity	Law
Sage Software Australia Pty Ltd (ABN: 40 071 007 326)	Australian Law.

12.3 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of the country and State (as applicable) set out above over any claim or matter

**EXHIBIT A**

We hereby disclose that the Sage HandiTax Cloud Service is facilitated through Dimension Data. You acknowledge and agree to comply with the following terms and conditions:

<https://www.dimensiondata.com/en-AU/Legal/Pages/Overview.aspx>