

SAGE 300 PEOPLE MANAGED SERVICES AGREEMENT

LAST UPDATED MAY 2021

(THIS AGREEMENT NOT APPLICABLE TO SAGE 300 PEOPLE MANAGED SERVICES PROCURED VIA A THIRD-PARTY VENDOR)

- A. You the Customer, require and Sage agrees to provide Software and Sage 300 People Managed Services to You subject to this Agreement;
and
- B. and the Fees stipulated in the Order in relation to the Sage 300 People Managed Services

1) Definitions and Interpretation

In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

AFSA means the Arbitration Foundation of Southern Africa;

Agreement means this Sage 300 People Managed Services Agreement, including any schedules, exhibits and annexures thereto, as may be amended by You and Us;

Business Hours means the hours between 8.30 am and 5.00 pm on any Business Day. Any reference to time shall be based upon South African Standard Time; and

Business Day means a day other than a Saturday, Sunday or a public holiday as gazetted by the government of the Republic of South Africa from time to time;

Claims means, without limitation, all rights, notices, actions, suits, proceedings, litigation, investigations, claims, demands, verdicts, judgements and findings wherever and however arising, whether past, present, unascertained, unknown, immediate, and whether based in contract, tort or statute;

Customer Data means all data that You provide Us through the use of the Services;

Commencement Date means the date of signature of the Order.

Confidential Information means the terms of this Agreement, any records, data or information (including Personal Information), of any nature tangible or intangible, and all other non-public commercially valuable information of any kind and in any form (including without limitation oral, written, electronic form) that relates to a party and its business affairs, whether or not identified as confidential, which is collected, received, processed, stored, transmitted or comes into the possession or control of a party as a result of this Agreement or which under the circumstances surrounding disclosure, ought to be treated as confidential, but excludes the following of either party:

- (a) information that is already in the public domain; or
- (b) information which subsequently becomes part of the public domain other than as a result of an unauthorised disclosure by the receiving party or its representatives; or
- (c) information which is or becomes available to the receiving party from a third party who is legally entitled to possess and provide the information to the receiving party without a confidentiality restriction; or

- (d) information that is disclosed by the receiving party to satisfy an order of a competent court or comply with the provisions of any law or regulation in force from time to time; or
- (e) is disclosed to a third party pursuant to the prior written consent from disclosing party; and/or
- (f) information that is received from a third party in circumstances that do not result in breach of the provisions of this Agreement.

Damages means, without limitation, all liabilities, costs, accounts, damages, losses, expenses, fines, penalties, and all related costs and expenses (including legal fees on the scale as between attorney and own client, interest and penalties) wherever and however arising, whether past, present, unascertained, unknown, immediate, future or contingent and whether based in contract, delict, equity or statute, including direct, general, indirect, special, incidental or consequential loss or damage, or any loss or corruption of data or loss of profit, business or goodwill;

Data Protection Laws means POPIA and all applicable laws of the Republic of South Africa and regulations governing the use or Processing of Personal Information, and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time;

Data Subject means the natural or juristic person to whom Personal Information relates and whose Personal Information is Processed by a Responsible Party, Operator or Sub-Operator;

Documentation means the technical and user documentation (including any relevant reports, guides, diagnostics, operating standards, specifications as well as user, technical, operation, installation and support manuals as well as product-integrated electronic help) that describes the proper, safe and efficient installation, configuration, intended operation, support and maintenance of the Software (as applicable);

Fees means the fees payable as specified in the applicable Order and any additional charges associated with providing the Service including travel costs required for provision of the Services;

Force Majeure means an event beyond the reasonable control of a party, by acts, events, omissions or accidents, including an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, a country lock down or such other disturbance as a result of a pandemic (as declared by the government of the Republic of South Africa or the World Health Organisation), industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief;

Managed Environment means the physical environment of the Sage 300 People Managed Services;

Managed Resources means the applicable hardware, software, network services and personnel to host the Software, including:

- (a) Windows Virtual desktop
- (b) Nerdio Autoscaling
- (c) Azure Active Directory Domain Services
- (d) Kubernetes Containers
- (e) Sage Provisioning Portal
- (f) SQL Elastic Pools
- (g) firewall and security services (which include intrusion protection, anti-virus, and anti-spyware applications);
- (h) data centre connectivity;
- (i) storage accounts and profiles (subject to reasonable and customary limits); and
- (j) Software licensing

Managed Services means the Sage 300 People Managed Services Azure Platform, allowing You to access Your 300 People Software through the Managed Services Environment, tailored based on the Services, solely for Your use and includes managing the Managed Resources which permit

Us to use the Software as well as Managed Services in accordance with the Documentation;

Initial Term means the term for which We will provide the Service to You stated in this Agreement;

Intellectual Property means, amongst other things, any know-how (not in the public domain), invention (whether patented or not), design, trade mark (whether or not registered), or copyright material (whether or not registered), processes, process methodology (whether patented or not), and all other identical or similar Intellectual Property as may exist anywhere in the world which is not in the public domain and any applications for registration of such Intellectual Property;

Operator means a person who processes personal information for the Responsible Party in terms of a contract or mandate, without coming under the direct authority of that Responsible Party;

Order means the applicable order document signed by Sage and the You and the Reseller and the You (in the event of the Software or Service being purchased through a Reseller) containing the details of the Software or Service procured by You as well as the Fees.

Our or Ours means pertaining or belonging to Sage;

Personal Information has the meaning ascribed to it in POPIA,

POPIA means the Protection of Personal Information Act 4, 2013;

Processing has the meaning ascribed to it in POPIA, and “**Process**”, “**Processed**” and “**Processes**” shall be construed accordingly-

Privacy Notice means Sage’s privacy notice posted on <https://www.sage.com/en-za/legal/privacy-and-cookies/> (or such other URL as Sage may notify to You) and which may be amended by Sage from time to time;

Responsible Party means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for Processing Personal Information;

Sage Partner means the person or entity authorised by Sage to promote, market and support Sage’s products and/or Services;

Scheduled Downtime means periods during which the Services will not be available in order to apply changes to the System including but not limited to scheduled or emergency outages, acts of force majeure, suspension of the Services due to legal compulsion, and internet access issues, operating system upgrades, Software patches, Software upgrades, hardware upgrades and hardware maintenance, Supplier Outages and any other circumstance outside the control of the Sage;

Service or Services means the Software (where applicable) and Sage 300 People Managed Services We have agreed to supply to You;

Service Level means the predetermined quantitative and qualitative performance levels that Sage is required to achieve, in respect of performing the Services, and are contained in this Agreement;

Software means the Sage software products and any other third-party applications approved by Sage, as specified in the applicable software agreement.

Sub-Operator means a person who Processes Personal Information for the Operator in terms of a contract or mandate, without coming under the direct authority of that Operator;

Supplier means the subcontractor supplier of the Sage 300 People Managed Service and any other third party who is subcontracted to assist

Sage in the establishment of the access to the cloud server, or the provision of Services;

Supplier Outages means scheduled or emergency outages, acts of force majeure, suspension of the Services due to legal compulsion, and internet access issues outside the control of the Supplier;

System means, as may be applicable to the Services, the following systems as further detailed in this Agreement:

- (a) Microsoft Azure SQL service;
- (b) Windows Virtual Desktop services;
- (c) customer servers;
- (d) Sage application servers;
- (e) third party application servers (if applicable);
- (f) live system monitoring; and
- (g) Software licensing.

System Changes mean changes which affect Your system integrity or security such as adding new users or changing access permission;

Term means the Initial Term and any Renewal Term;

VAT means value-added tax, chargeable under the Value Added Tax Act, 1991;

VPN means Virtual Private Network, a technology that establishes a private or secure network connection within a public network, such as the Internet

We and Us means Sage, together with its Suppliers, officers, servants, contractors, agents or authorised distributors;

Your or Yours means pertaining or belonging to You (the Customer); and

Interpretation

In this Agreement -

- (a) clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
 - i. an expression which denotes -
 - ii. any gender includes the other gender;
 - iii. a natural person includes a juristic person and vice versa;
 - iv. the singular includes the plural and vice versa;
 - v. a party includes a reference to that party's successors in title and assigns allowed at law; and
 - vi. a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the
 - vii. first and last mentioned clauses.

Any reference in this Agreement to –

- (a) "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning; and
- (b) "person" means any natural or juristic person including but not limited to any company, close corporation, trust, partnership or

other entity whether having separate legal personality.

- (c) The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- (d) Any substantive provision, conferring rights or imposing obligations on a party and appearing in any of the definitions in this clause A or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- (e) Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- (f) Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- (g) A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or substituted from time to time.
- (h) Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- (i) If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- (j) Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- (k) The rule of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement, shall not apply.
- (l) No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a party to this Agreement.
- (m) The use of any expression in this Agreement covering a process available under the law of the Republic of South Africa, such as winding-up, shall, if either of the parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- (n) Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- (o) In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement, unless otherwise expressly stated.

2) Supply of Services

Sage will provide the Services to You subject to the terms and conditions of this Agreement.

- (a) Before commencement of Service, Sage will notify You that it has completed the new system implementation, platform migration, and/or Software upgrade project. Invoicing will begin when Sage notifies You in writing that the Services have been released and is available.
- (b) Unless otherwise agreed to in writing between the You and Us, or identified on a new order, Sage excludes all system items and other services residing or provided outside of Our Managed Services. This means You are responsible for all hardware, software, and services other than that which is located in Our Sage 300 People Managed Service including, but not limited to computer devices, hardware peripherals, software, and internet connectivity services used to access or display the Service, or to enter or Process Your business data.
- (c) When applicable, if You have a question or need for support, You should follow Our customer support procedure. We will assign a priority

to Your query, and We will target a response summarised in the Incident Management section, described in this Agreement.

- (d) Upon a mutually agreed implementation date, We will enable the Software.
- (e) Additions to the Services will initiate an updated schedule applicable to the modified Service.

2.1 Service Limitations

- (a) The Services are provided in good faith and to the best of Our ability in terms of availability, performance and security.
- (b) Subject to Scheduled Downtime, We will use reasonable endeavours to make the Services available 7 (seven) days a week and 24 (twenty-four) hours a day.
- (c) Sage discloses that it has engaged a Supplier, whose terms and conditions are automatically incorporated herein, to assist in providing the Services to You. Sage reserves the right in its absolute discretion to change Suppliers in order to provide the Service, subject to the terms set out in this Agreement.
- (d) As part of the Service, You must nominate one or more technical contact(s) as an authorised person who will be reflected in this Agreement. Change requests must come from one of Your authorised contacts, and incident and other reporting and liaison will be sent to technical contact(s). Changes to Your nominated technical contacts must be in writing and come from another nominated technical contact or the person who signed the Order.
- (e) Sage reserves the right to carry out monthly maintenance activities during a 2-hour window. This window is normally scheduled outside of Business Hours.
- (f) In the event the Service becomes inoperative, We will exert reasonable endeavours to restore the Service as quickly as possible, including utilising other data centres available to Us, if possible. We have no responsibility for matters within Your control which may impair Your ability to access the Service, including without limitation (i) Your hardware, network components and infrastructure; (ii) any Software running on Your hardware; and (i) Your connection to the internet.
- (g) We will make reasonable commercial efforts to prevent security breaches in the Sage 300 People Managed Service that provides the Managed Services in terms of local network, operating system, and hardware that is in Our exclusive control.
- (h) We reserve the right to request the removal of content from, and the cessation of transmittal of information using the Managed Services if that content or information is illegal or may threaten the continued operation of the Sage 300 People Managed Service.
- (i) We may from time to time, and at Our discretion, use a Supplier to assist with matters incidental to providing the Services, establishing security profiles, troubleshooting, etc.
- (j) We may from time to time, and at Our sole discretion, change Supplier in order to provide You with an operational Sage 300 People Managed Service. In order to minimise any disruption to Your Service, We shall give You at least 14 (fourteen) days' notice of Our intention to change Supplier.
- (k) Any services outside the scope of this Agreement, for instance, any services resulting from Your failure to comply with Your responsibilities or associated with software not included on the order, and approved by Sage, are out of scope. Out of scope services also include services requested or required in connection with a third-party solution or integration that was not provided by Sage or is negatively impacting the overall stability or performance of the Services. Additional services may be provided on an hourly basis at Our then current rates on a time and material basis.
- (l) Further Service limitations and exclusions, relating to specific services, are set out in this Agreement.

3) Term

This Agreement will commence on the Commencement Date and, unless terminated pursuant to clause 10, continue for the Initial Term and thereafter this Agreement shall be automatically renewed for successive term (each a “Renewal Term”), unless:

- (a) You notify Us of termination, in writing, at least 90 (ninety) days before the end of the Initial Term, as the case may be; or
- (b) otherwise terminated in accordance with the provisions of clause 10 of this Agreement.

4) Payment

- (a) The Fees for the Services are due and payable by You to Us by electronic funds transfer.
- (b) We reserve the right to increase prices once a year except to the extent set forth in this Agreement in accordance with the latest Consumer Price Index published by Statistics South Africa.
- (c) The billing commencement date is from the start of the month in which the Services are enabled.
- (d) If You dispute any part of an invoice You must notify Us within 14 (fourteen) days of receiving the invoice from Sage.
- (e) If any amount owing by You under this or any other agreement for Our Services is 30 (thirty) or more days overdue, We may, without limiting Our rights and remedies, accelerate Your unpaid fee obligations under such agreement so that all such obligations become immediately due and payable, and/or suspend Our Services to You until such amount is paid in full.
- (f) We may charge interest on late payments at the then-current rate fixed under the Prescribed Rate of Interest Act, 1975 from the date on which an invoice becomes overdue until payment is received in full by Us.
- (g) Payment obligations during the Term are non-cancellable and Fees already paid are non-refundable.

5) Taxes

- (a) You must pay and indemnify Us against all taxes and duties payable in respect of this Agreement, any supply made under the Agreement and the Fees (excluding any income tax payable by Us).
- (b) If VAT is imposed on any supply made by Us under the Agreement, You must pay, in addition to any Fees (unless those fees already include VAT), an additional amount equivalent to the VAT payable.
- (c) We will provide You with a valid tax invoice for VAT which We require You to pay to Us.

6) Your Obligations

Our duty to provide You with the Service and Your right to access and use the Services depends on Your compliance with the terms of this Agreement, including payment of all applicable fees and complying with the following obligations, failure of which may result in Us immediately suspending Your Services:

- (a) You must comply with all reasonable directions and policies issued by Us in relation to the use of the Services.
- (b) It is Your responsibility to manage Software user setup, and data processing, within the Sage 300 People Application.
- (c) You must not use the Services in a way which is illegal, or which interferes with or disrupts other Internet users, service providers including the Supplier, their computers, software or hardware including without limitation:
 - i. propagating computer worms, trojans or viruses;
 - ii. attempting a denial of service attack on any of the Services;
 - iii. hacking or breaking any security mechanism on any of the Services;
 - iv. using the Services to gain unauthorised access to another computer or network or in a way that disrupts or threatens the Services;
 - v. sending harassing, obscene, indecent, offensive or threatening electronic mail;
 - vi. forgery (or attempted forgery) of electronic mail messages; and
 - vii. placing, transmitting or storing any defamatory material.
 - viii. using the service in a bureau or outsourcing capacity to generate revenue.

- (d) You must keep all identification and log-in information that is used as part of the Services secret and secure. You agree not to disclose to any other person any identification or log-in information, whether in use or not, nor any other Confidential Information relating to Us which You obtain by the Services.
- (e) You must ensure that remote access to the Software by Sage, as required from time to time, is not prevented by Your actions.
- (f) You are responsible for any customisations or modifications to the standard Software and should ensure that these customisations or modifications are tested during any update process. To facilitate these updates, customisations and modifications should be in line with the guidance set out in the applicable Software Documentation, relating to customisations, as provided by Sage. Any non-compliant customisations may cause significant issues in applying an update and You will be responsible and liable for any costs associated with resolving any such issues. Sage may review customised code prior to any upgrade to assess and fix it if required, at Your cost.
- (g) Further obligations which You must comply with, where necessary or relevant, based on the Services provided are set out in this Agreement.

7) Service Level-Sage 300 People Managed Services Environment

Sage shall appoint a Supplier to provide the Managed Services Environment associated with the Services.

- (a) Subject to any disruptions caused by Scheduled Downtime, the Service availability will be provided at the standard Service Level, which is at least 99,5% availability server and applications (“Uptime Percentage”) to access the Service during each calendar month of the Term. The parties acknowledge that the Service Level may be subject to change by Sage from time to time.
- (b) In the event of Our failure to deliver (or procure the delivery) of the Services in accordance with the requirements of clause 7(a), We will credit You with service credits.
- (c) if the Uptime Percentage over the course of a 12 (twelve) month rolling period, You will be eligible for a credit against Your next period’s subscription fee in the amount set forth below:
 - i. 90.0% -99.5% -5% credit;
 - ii. 85.0% -89.9% -10% credit; or
 - iii. 84.9% or less – 15% credit.
- (d) In order to receive a credit, You must request the credit by emailing the Sage Customer Services Manager within 30 (thirty) days following the end of the calendar month during which Sage failed to maintain the Uptime Percentage.
- (e) You are ineligible to receive any credit if You have a balance owing on Your account or are otherwise in default of this Agreement. Sage will calculate any server unavailability using Sage’s system logs and records/ In all cases, Sage’s server uptime reports will determine whether the Uptime Percentage has been met or not.
- (f) If We, at any time, elect to change Suppliers, We will ensure that the terms on which We engage any subsequent Supplier provide for at least equivalent or better service levels on the part of the replacement Supplier.
- (g) The hardware and underlying software used to host the Sage 300 People Managed Service will at all times comply with Our requirements for a “supported designated Environment” as contemplated in the applicable Sage Product Agreement, and meet or exceed the better of either:
 - i. The then current minimum recommended specification determined by Us for the Software; or
 - ii. Any specification agreed to by Us for the purposes of this Agreement.
- (h) Please refer to the ONLINE SERVICES SUPPORT GUIDE for additional Support guidance:

<https://www.sage.com/en-za/legal/terms-and-conditions/product-and-service-terms-and-conditions/>

8) Confidentiality

- (a) Each party agrees to not disclose the other's Confidential Information and to use it only for the purposes of the Agreement. This obligation will not apply to any information that a recipient already knew before disclosure or information that comes into the public domain (except by breach of confidentiality). If required by law, a party may disclose the Confidential Information of the other party, provided that, where a party determines that such disclosure may be compelled, that party first notifies the owner of the affected Confidential Information and provides such co-operation as the owner of the Confidential Information reasonably requires in objecting to the disclosure.

9) Liability

- (b) The functionality of the Software will comply with the Documentation published by Us from time to time;
- (c) We will not implement any change to the Software which materially degrades its functionality at any time during the Term.
- (d) Except for the express Service Level warranties set out in clause 7, Services are provided on an "as is" basis and Your use of the Services is at Your own risk. To the maximum extent permitted by law, and except to the extent set out in this Agreement, We do not make, and hereby disclaim any and all other express and or implied warranties. We do not warrant that the Services will be uninterrupted, error-free or completely secure.
- (e) The only terms and conditions implied into the Agreement are those which cannot be lawfully excluded. Notwithstanding any other term in this Agreement, to the extent that consumers have the benefit of certain rights or remedies under the Consumer Protection Act, 2008; the Electronic Communications and Transactions Act, 2002; and similar state and territory laws in the Republic of South Africa, in respect of which liability cannot be excluded, then to the maximum extent permitted by law, such liability is limited, at Sage's option, in the case of goods or Services provided under this Agreement, to replacement of the goods or Services or paying the cost of having the goods or Services re-supplied.
- (f) Subject to clauses 9(h), Our liability to You in relation to any Damages or Claims made by or through You in relation to or arising from this Agreement is limited to THE VALUE OF THE FEES PAID OR PAYABLE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- (g) Neither You nor We shall be liable to the other party for any indirect, special, incidental or consequential loss or damage, including (subject to clause 9(h)) any loss of profit, business or goodwill.
- (h) The limitation and exclusion of liability in clauses 9(f) and (g) will not apply to the liability of a party for infringement of intellectual property rights, breach of obligations of confidentiality or privacy, or for personal injury or death.
- (i) Notwithstanding the general exclusion in clause 9, each party shall be liable for any breach of its obligations arising from or in connection with customer Data, including loss or corruption of data, and data breach.
- (j) You acknowledge that:
 - i. the Software was developed without consideration of Your objectives and needs; and
 - ii. software in general is not error-free,
 - iii. and agree that the existence of errors in the Software will not constitute a breach of this Agreement by Sage.
 - iv. Sage provides the Software and Documentation "as is".
 - v. No warranties are made with respect to the Software or Documentation by any person, including but not limited to Sage, any of its officers, servants, contractors, agents and distributors authorised by Sage, except as expressly set out in this Agreement.
 - vi. To the extent permitted by law, Sage or any of its officers, servants, contractors, agents or distributors authorised by Sage, will not be liable to You for any Damages incurred by You as a result of using the Software and Documentation, other than as a consequence of a breach by Sage of its obligations under this Agreement.

- (k) Your subscription to the Service does not remove the need for You to procure additional services relating to application installation, configuration, testing (such as initial delivery or upgrade tests), and implementation (such as installing technology at Your business premises, converting Your business data to a format that can be processed by the Service, and training). Procuring these additional services is Your responsibility and Sage shall have no liability whatsoever in relation to Your failure to procure these additional services, unless We have expressly committed to a fixed number of hours to help install, complete the set-up, and convert Your data, any installation, set-up, and data conversion services We provide will be invoiced at Our rates, applicable at the time, on a time and material basis.

10) Termination

- (a) Sage may terminate this Agreement immediately if You are in material breach and do not remedy the breach within 30 (thirty) days of receiving written notice requiring You to do so, or if You become or are in jeopardy of becoming subject to any form of insolvency administration (including receivership, administration or liquidation). Without prejudice to Our other rights, You will immediately pay Us all amounts due on termination.
- (b) On termination each party must return or destroy all Confidential Information of the other and certify in writing to that effect.
- (c) If the Agreement is terminated other than where You are in breach of this Agreement or subject to insolvency administration, then, provided the termination occurs after the end of the Initial Term, We will refund any Fees paid by You with respect to any period after the date of termination pro rata. Unless the termination is due to Our breach of this Agreement any payments made for this service during the Term are not refundable and it will not relieve You of Your obligations to pay any fees payable to Us for the balance of the Initial Term prior to the effective date of termination.
- (d) Upon termination of this Agreement, and at any time upon Your request, We will, at our discretion, extract Your data and provide it to You in a form that is accessible and usable by You.

11) Force Majeure

- (a) We shall have no liability to You under this Agreement if We are prevented from or delayed in performing Our obligations under this Agreement, or from carrying on Our business due to a Force Majeure, provided that You are notified of such an event and its expected duration, if quantifiable, in writing.
- (b) To the extent that We delay or are unable to perform under this Agreement is due to the existence and its notification of a Force Majeure, the affected obligations of that We have under this Agreement will be suspended until the passing of that Force Majeure event. We will take all reasonable steps to minimise any disruption to the Services and resume the performance of its affected obligations.
- (c) If substantially all of our obligations under this Agreement are suspended by a Force Majeure event under clause 11(a) by more than 21 (twenty-one) days. The parties may enter into discussions to modify the affected obligations by variation of this Agreement, in writing.

12) General

- (a) You may not directly or indirectly solicit for employment, or employ, Our employees until 12 (twelve) months have expired after the termination of this Agreement.
- (b) Either You or We may assign or novate the Agreement to a related body corporate with the prior written consent of the other party, which will not be unreasonably withheld or delayed.
- (c) We may subcontract all or any part of the Services with Your prior written consent, provided We:
 - i. remain responsible for the performance of the Services in accordance this Agreement;
 - ii. will be and remain liable to You for all acts, defaults and omissions of Our subcontractors as if they were Our acts, defaults or omissions; and

- iii. ensure each subcontractor complies with the terms of this Agreement, as if a reference to Us in any such term of this Agreement was a reference to a subcontractor.
- (d) A provision of, or a right created under this Agreement may not be waived or varied except in writing, signed by the party or parties to be bound.
- (e) If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision which will be severed.
- (f) This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous representations, agreements, understandings and negotiations on that subject matter.
- (g) Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or which are necessary, or reasonably requested by any other party, to give effect to this Agreement.
- (h) The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.
- (i) Clauses 4, 5, 6(c), and 8 survive the termination of this Agreement for any reason.

13) Disputes

- (a) Any dispute, controversy or claim arising out of or relating to this Agreement, its interpretation, execution, the termination of or invalidity thereof, shall be settled by arbitration in accordance with the rules of arbitration of AFSA. The place of arbitration shall be in Johannesburg. The language to be used in the arbitral proceedings shall be English. The number of arbitrators shall be 1 (one), to be appointed according to the AFSA rules. Notwithstanding anything contained to the contrary, either of the parties may seek interim and junctive relief from a court of competent jurisdiction which shall not be deemed as a waiver of any provisions contained in this clause 13.
- (b) Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.
- (c) Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- (d) This clause 13 will continue to be binding on the parties notwithstanding any termination or cancellation of this Agreement.
- (e) The parties agree that the written demand by a party to the dispute in terms of clause 13) that the dispute or difference be submitted to arbitration is to be deemed as a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

14) Variation to these Terms and Conditions

- (a) Subject to any agreement to the contrary and to clause 14(c), these terms and conditions will remain in force for the Initial Term. We may propose a variation to these terms, to take effect from the commencement of the first Renewal Term or any anniversary of the commencement of that Renewal Term, provided that We notify You of any such proposed variation at least 30 (thirty) days in advance.
- (b) If You do not agree to any variation to these terms and conditions We propose, You may terminate the Agreement by written notice to Us with effect at any time up to 120 days after We have notified You of the proposed variation without penalty and the terms and conditions will remain in force, without the proposed variation, until the date of termination.

- (c) The preceding provisions of this clause 14) do not apply to changes to the Fees. The Fees are fixed for the Initial Term but may be varied by Us with effect from the commencement of any Renewal Term, provided that We must notify You of the amended Fees at least 30 (thirty) days prior to the commencement of each Renewal Term.

15) Anti-Bribery and Corruption

- (a) Each party will and will procure that persons associated with them:
 - i. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the “Relevant Requirements”)
 - ii. not engage in any conduct which would constitute an offence under any of the Relevant Requirements;
 - iii. not do, or omit to do, any act that may lead the other party to be in breach of any Relevant Requirements;
 - iv. 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;
 - v. 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.

16) Intellectual Property and Licensing

- (a) We warrant that:
 - i. We own, or are licensed and authorised to make available for Your use the Software for the purposes of this Agreement;
 - ii. that Your use of the Software and the Sage 300 People Managed Services Environment in accordance with the terms of this Agreement will not cause You or Us to infringe the intellectual property rights of any third party.
- (b) We will indemnify You against all Claims and Damages You may suffer or incur in the event of any breach of the warranties in clause 16(a), provided that You must notify Us as soon as practicable of any Claim and, if We request, allow Us to defend, manage or settle the Claim.
- (c) In the event of a Claim that Your use of the Software in accordance with this Agreement infringes the intellectual property rights of any third party then, without limiting clause 16(b), We will procure for You the right to continue to use the Software, or modify the Software so it is no longer infringing, or if neither of those are reasonably possible, refund You any Fees paid, together with Your reasonable costs incurred in migrating to an alternative provider.
- (d) You acknowledge that the Software and the Sage 300 People Managed Services Environment is made available to You under licence only. That licence persists only during the currency of this Agreement and nothing in this agreement assigns to You any ownership or perpetual right with respect to the Software.
- (e) Without limiting clause 16(d), the Software is licensed to You subject to the EULA. The terms of the EULA are incorporated into and form part of this agreement, and are binding on both parties, provided that, to the extent that there is any inconsistency or conflict between the terms of this Agreement and the terms of the End User License Agreement, the terms of this Agreement shall prevail.
- (f) To the extent that in the performance of this Agreement or any related agreement, intellectual property rights are created which vest in, or are required to be assigned to, You, We acknowledge that You are free to deal with all such rights freely, provided that, where the use of such intellectual property is necessary for use of the Sage 300 People Managed Services Environment, You must retain sufficient rights to enable Your continued use of the Sage 300 People Managed Services Environment as long as You remain a party to this Agreement.

17) Data Protection

- (a) For the purposes of this Agreement, the parties agree that You are the Responsible Party in respect of Personal Information contained within Customer Data (“Customer Personal Information”) and as Responsible Party, You have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- (b) You warrant and represent that:
- i. You will comply with and will ensure that Your instructions for the Processing of Customer Personal Information will comply with the relevant Data Protection Laws;
 - ii. You are authorised pursuant to the Data Protection Laws to disclose any Customer Personal Information which You disclose or otherwise provide to Sage regarding persons other than Yourself;
 - iii. You will where necessary, and in accordance with the Data Protection Laws, obtain all necessary consents and rights and provide all necessary information and notices to Data Subjects in order for:
 1. You to disclose the Customer Personal Information to Sage;
 2. Sage to Process the Customer Personal Information for the purposes set out in this Agreement; and
 3. Sage to disclose the Customer Personal Information to:
 - (a) its agents, service providers and other companies within the Sage group of companies.
- (c) You acknowledge and agree that, in addition to those person to whom Sage is authorised to disclose the Customer Personal Information under clause 17(b), Sage may also be obliged to disclose Customer Personal Information to:
- i. law enforcement agencies;
 - ii. any other person in order to meet any legal obligations on Sage, including statutory or regulatory reporting; and
 - iii. any other person who has a legal right to require disclosure of the information, including where the recipients of the Customer Personal Information are outside the Republic of South Africa.
- Provided that, if Sage is obliged to disclose Customer Personal Information in the circumstances contemplated in clauses 17(b) , Sage must first notify You of the demand for the disclosure of the information and afford You a reasonable opportunity to oppose or comply with the demand directly or, in circumstances where Sage is not permitted to disclose the demand to You, Sage must make all reasonable efforts, including taking or defending relevant legal action to resist the disclosure.
- (d) Where, and to the extent Sage Processes Your Personal Information as a Responsible Party in accordance with the Privacy Notice, Sage shall comply with all Data Protection Laws applicable to Sage as a Responsible Party.
- (e) You agree that Sage may record, retain and use Customer Personal Information generated and stored during Your use of the Service (including Customer Personal Information, which Sage shall Process as a Responsible Party as set out in the Privacy Notice and/or retention policy, on the basis of Sage’s legitimate business interests), in order to.
- i. carry out research and development to improve Sage, and its Affiliates’, services, products and applications for use by You;
 - ii. develop and provide new and existing functionality and services (including statistical analysis, benchmarking and forecasting services) to You;
 - iii. provide You with location-based services (for example location relevant content) where Sage collects geolocation data to provide a relevant experience,
- (f) provided that Sage shall only record, retain and use the Customer Personal Information and/or Process Customer Personal Information on a pseudonymized basis, displayed at aggregated levels, which will not be linked back to You or to any living individual. At any time, You can withdraw Your consent for Sage to use Customer Personal Information in the manner described in this clause 17.5, by sending a notice to Sage at the email address set out in the Privacy Notice.

- (a) Each of the parties chooses their respective *domicilia citandi et executandi* at the physical addresses stipulated in the Order, and for the purposes of giving any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement.

19) Sanctions

Neither of the parties, any of their subsidiaries or any director, officer, employee, agent, affiliate or representative of any party or any of its subsidiaries is a person that is, or is owned or controlled by a person that is,

- (a) the subject of any sanctions or restrictions administered or enforced by the [insert applicable sanctions] or other sanctions authority relevant in the [insert country] or any other jurisdiction of incorporation or formation of any party (collectively, “Sanctions”), or
- (b) located, organised or resident in a country or territory that is the subject of Sanctions (each, a “Prohibited Country”). For purposes of this Agreement, the Prohibited Countries shall be those countries reasonably determined by Sage as subject to Sanctions from time to time and notified to You. The Prohibited Countries as of the date hereof are listed in within internal Sage Policy (Prohibited or Restricted Countries) and will be updated from time to time.

20) Governing law and jurisdiction

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with Schedule 1.

Schedule 1 – Sage Contracting Entities, Governing Law and Jurisdiction

Sage South Africa (Pty) Ltd; 6th Floor, Gateway West, 22 Magwa Crescent, Waterfall, Midrand 2066,	South African Law	The parties irrevocably agree that the High Court of the Republic of South Africa has exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
Sage Software Nigeria Limited; 1st Floor Plot 6 Southgate House Udi Street Osborne Foreshore Estate Ikoyi Lagos State Nigeria	South African Law	The parties irrevocably agree that the High Court of the Republic of South Africa has exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
Sage Software East Africa Limited; 4th Floor Nivinia Towers Westlands Road Nairobi Kenya	South African Law	The parties irrevocably agree that the High Court of the Republic of South Africa has exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).