

# Sage Learning Membership Terms and Conditions January 2019



**Important: You should read all of these terms to check that you agree to them before purchasing a Subscription. By purchasing a Subscription, you agree to the terms set out below.**

Your Subscription to the Digital Learning Centre is subject to these Terms and Conditions and the documents we refer to (as updated by us from time to time) which form a legally binding contract between you and us (the **"Agreement"**). You should read this Agreement carefully in full before accessing or using the Digital Learning Centre. You indicate that you agree to all the terms of this Agreement from the earliest date you tick a box or click on a button (or something similar) to signify your acceptance, or you access or use the Digital Learning Centre. If you don't accept this Agreement, you should contact us immediately and not access or use the Digital Learning Centre in any way. Please note, unless otherwise specified by us in writing, you cannot use the Digital Learning Centre for a trial period and no refund or cooling-off period applies. We may undertake credit checks when you apply for a Subscription to the Digital Learning Centre and any orders processed are subject to satisfactory credit status.

We may update this Agreement at any time. We will make reasonable efforts to communicate any changes to you by sending an email to your user address, but it is up to you to ensure that you regularly check, read, understand and agree to the most recent version of this Agreement as you will be deemed to accept all updates if you continue to access and use the Digital Learning Centre. A link to this Agreement will be located in the Digital Learning Centre and hosted on [www.sage.com](http://www.sage.com).

Unless the context otherwise requires, references to statutory provisions include those statutory provisions as amended or re-enacted. Words in the singular include the plural and words in the plural include the singular. Any reference to writing or written in this Agreement includes facsimile and email.

## **Definitions and Interpretation**

In this Agreement, these words have the following meanings:

**"Customer Data"** shall mean any data, information or material provided, inputted or submitted by you or on your behalf into the Digital Learning Centre, which may include (without limitation) data relating to your customers and/or employees.

**"Customer Personal Data"** has the meaning set out in clause 10.

**"Data Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

**"Data Processor"** a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Data Controller.

**"Data Protection Laws"** means all applicable EU laws and regulations governing the use or processing of Personal Data, including (where applicable) the European Union Directive 95/46/EC (until and including 24 May 2018), the GDPR (from and including 25 May 2018), and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time.

**"Data Retention Period"** means the period of forty (40) days from and including the effective date of termination of this Agreement.

**"Digital Learning Centre"** means the digital learning centre (which shall include, without limitation, all Learning Materials) provided to you by us, pursuant to this Agreement.

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**“Documentation”** means all documentation and information made available to you by us from time to time which describes the Digital Learning Centre, your Subscription, the Subscription Fees payable and applicable payment terms and all relevant user instructions.

**“Effective Date”** means the date upon which you access the Digital Learning Centre for the first time.

**“GDPR”** means EU General Data Protection Regulation 2016/679.

**“Intellectual Property Rights”** means all patents, copyrights, design rights, trade-marks, service marks, trade secrets, know-how, database rights and other rights of a similar nature (whether registered or unregistered) anywhere in the world.

**“Learning Materials”** means any e-learning information and other learning materials displayed on our Website and any other written learning materials that form part of the Digital Learning Centre.

**“Personal Data”** means any information relating to an identified or identifiable natural person (**“Data Subject”**); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**“Privacy Notice”** means Sage’s privacy notice posted on [www.sage.com](http://www.sage.com) (or such other URL as Sage may notify to you) which may be amended by Sage from time to time.

**“Processing”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction and “Process”, “Processed” and “Processes” shall be construed accordingly.

**“Subscription”** means your subscription to the Digital Learning Centre.

**“Subscription Fees”** means the subscription fees payable by you to us, for access to and use of the Digital Learning Centre, payable in accordance with clause 3.

**“Supervisory Authority”** means an independent public authority which is established under applicable Member State law and which concerns itself with the Processing of Personal Data.

**“Third Party Software”** means the computer programs in machine readable object code form and/or any part of them, together with any user guides or technical documentation (in printed or electronic format) of the third party software (excluding marketing materials and sales publications) which may be supplied by us under this Agreement, the intellectual property rights in which are vested in a person or organization other than us. Third Party Software shall also include back-up copies as well as any updates, upgrades, modifications, enhancements or corrections which may be supplied to it. Any contract entered into for the Third-Party Software is between you and the relevant third party, and not us. We recommend that you refer to the third party’s terms and conditions prior to using the relevant Third-Party Software as well as any updates, upgrades, modifications, enhancements or corrections which may be supplied to it;

**“us” “we” “our” “Sage”** Sage South Africa Pty Ltd (company registration number 2003/015693/07), registered office at 6<sup>th</sup> Floor, Gateway West Offices, 22 Magwa Crescent, Waterfall City, Midrand.

**“Website”** means the website through which the Digital Learning Centre is accessed, being the website <https://www.sage.com/en-za>.

**“you” and “your”** the customer who subscribes to the Digital Learning Centre.

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## 1. This Agreement

This Agreement describes how you are allowed to access and use the Digital Learning Centre.

## 2. Who this Agreement is between?

This Agreement is between:

- I. us, Sage South Africa (Pty) Ltd (company registration number 2003/015693/07), registered office: 6<sup>th</sup> Floor, Gateway West Offices, 22 Magwa Crescent, Waterfall City, Midrand; and
- II. you, the person or organization authorized to access and use the Digital Learning Centre.

collectively referred to herein as the "Parties".

## 3. Fees and Expenses

- 3.1. We will invoice you for the Subscription Fees as specified in the Documentation and you will pay the Subscription Fees as specified in the Documentation.
- 3.2. You will, on the Effective Date, provide us with valid, up-to-date, and complete purchase order information, billing details and you will complete a continuous direct debit mandate authority. We will invoice you at the agreed intervals for the Subscription Fees and take this amount from your nominated bank account via direct debit on the dates specified in the Documentation.
- 3.3. If we have not received payment of the applicable Subscription Fees within thirty (30) days of the due date for payment, then without prejudice to our other rights of remedies:
  - 3.3.1. we may, without liability to you, disable your password, account and access to all or part of the Digital Learning Centre or disable certain functionality and we will be under no obligation to provide you with access to any or all of the Digital Learning Centre to you whilst the invoice(s) concerned remain unpaid; and
  - 3.3.2. interest will accrue on such overdue amounts at an annual rate equal to four percent (4%) over the then current base lending rate of the South African Reserve Bank at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 3.4. All amounts and fees stated or referred to in this Agreement are:
  - 3.4.1. payable in South African Rands;
  - 3.4.2. subject to clause 4.6, non-cancellable and non-refundable;
  - 3.4.3. exclusive of value added tax or any other applicable sales tax which will be added to our invoices at the appropriate rate.
- 3.5. We reserve the right to review the level of Subscription Fees once a year and may amend the Subscription Fees after this review. If there is a change to any Subscription Fees payable, we will communicate this change to you via email.
- 3.6. We may from time to time at our discretion offer special price deals, discounts, free periods or other incentives. We can remove these offers at any time without notice and you may need to meet certain conditions in order to take advantage of these offers.
- 3.7. For the purposes of clause 12.1.1, failure to pay the Subscription Fees when due constitutes a material breach of this Agreement.

## 4. Warranties and Limitation of Liability

- 4.1. We warrant that your use of the Learning Materials will not infringe the rights of any third party or any Third-Party Software. In the unlikely event of any breach of this clause 4.1 by us, then we will either provide replacement Learning Materials to correct the problem or refund the Subscription Fees you paid. If we give you a refund, your Subscription will immediately end.
- 4.2. You agree that the Learning Materials are informative in nature based on our understanding of the subject matter at the time and are not advisory or intended to be relied upon by you. You should independently verify any information provided in the Learning Materials before relying on it.
- 4.3. We do not guarantee (or give any other assurances whatsoever) that:

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- 4.3.1. the Learning Materials will meet your individual needs;
  - 4.3.2. there will be no interruptions in your use of the Learning Materials;
  - 4.3.3. you will get particular results from the Learning Materials; and
  - 4.3.4. the standard of the results you will get from using the Learning Materials.
- 4.4. Except where clause 4.3 applies, this clause 4 describes all of our commitments relating to the Learning Materials. Unless this Agreement states otherwise, we are not bound by any other contract terms, warranties or any other type of promise relating to the Learning Materials. If, by law, a particular term, warranty or other promise relating to the Learning Materials would automatically be included in this Agreement, we will only be bound by that term, warranty or promise to the extent set by law.
- 4.5. Subject to clause 4.6 below:
- 4.5.1. we will have no liability for any losses or damages which may be suffered by you (or any person claiming under or through you), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
    - 4.5.1.1. special damage even though we were aware of the circumstances in which special damage could arise; or
    - 4.5.1.2. loss of profit and/or anticipated profit; or
    - 4.5.1.3. loss of revenue, contract and/or business; or
    - 4.5.1.4. loss of savings and/or anticipated savings; or
    - 4.5.1.5. business interruption; or
    - 4.5.1.6. depletion of goodwill and/or similar losses; or
    - 4.5.1.7. loss or corruption of data; or
    - 4.5.1.8. pure economic loss, costs, damages, charges or expenses.
- 4.6. Our total liability, whether in contract, tort (including negligence) or otherwise in connection with this Agreement, shall in no circumstances exceed 100% of any Subscription Fees paid by you to us for your Subscription where such liability arose.
- 4.7. The exclusions in clause 4.5.1 shall apply to the fullest extent permissible at law, but we do not exclude liability for death or personal injury caused by our negligence or our officers, employees, contractors or agents' fraudulent misrepresentation or any other liability which may not be excluded at law. We recommend that you consider obtaining insurance cover if you believe that you could experience anything that we have told you that we will not be responsible for.

## 5. Intellectual Property Rights and Ownership

- 5.1. All Intellectual Property Rights in the Learning Materials shall belong to us or our licensors absolutely. We hereby grant you a non-exclusive license to use the Learning Materials as set out in clause 6. Such license shall be for the duration of your Subscription only. The only rights you have to the Learning Materials are the license to use the Learning Materials as described in clause 6 and any other rights we give you under this Agreement.

## 6. Your rights to use the Learning Materials

- 6.1. By accepting this Agreement, we give you the right to use the Learning Materials in the way described in this Agreement. You may not use the Learning Materials in any other way.
- 6.2. Your right to use the Learning Materials is not exclusive, which means that we may grant the same and similar rights to others.
- 6.3. The Learning Materials may only be used by the person or organization who has purchased the Subscription.
- 6.4. You can only access the Learning Materials for the duration of your Subscription. After this time, you will not be able to use the Learning Materials or access the Learning Materials without buying another Subscription from us.

## 7. Restrictions on using the Learning Materials

- 7.1. The Learning Materials may be accompanied or include other material which we do not own ("Third-Party Material"). You cannot use the Third-Party Material by itself – you can only use it as part of your Subscription, and you agree to comply with any license agreement provided with that Third-Party Material. If there is no license agreement with that Third-Party Material, this Agreement will apply to how you use that Third-Party Material.

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7.2. The following are examples of things you warrant you will not do (or allow anyone else to do) with the Learning Materials:

- 7.2.1. you must not use the Learning Materials in any way other than as set out in this Agreement.
- 7.2.2. only the person or organization who has purchased (or persons within the organization who has purchased) the Subscription may use the Learning Materials. You must not allow anyone else to access or use the Learning Materials in any way or give anyone else any right (of any kind) to access, distribute, alter, copy, use or benefit from any part of the Learning Materials in any way.
- 7.2.3. you may not use the Learning Materials to help you develop your own training course or learning materials.
- 7.2.4. you cannot transfer any part of the Learning Materials to any other person or organization. For example, you cannot sell the Learning Materials. If you become insolvent, an insolvency practitioner may not pass on the Learning Materials or your Subscription as part of your assets.

7.3. If we believe that the way you use the Learning Materials may breach any part of this Agreement, we reserve the right to terminate your Subscription in accordance with clause 12.

## 8. Right of Audit

8.1. Without prejudice to any other rights or remedies which we may have, if we reasonably suspect that you have breached clauses 6 or 7 of this Agreement, then we (or our third-party representatives) shall have the right to audit your Subscription activity. You will allow us (or our third-party representatives) to access your premises, personnel, systems and relevant records for the purposes of conducting such an audit, which may take place during your Subscription and for a period of one (1) month thereafter. If, after the completion of such an audit, we determine that you have breached clauses 6 or 7 of this Agreement then this will be deemed as a material breach of this Agreement and we may immediately terminate your Subscription in accordance with clause 12.1.2. Any outstanding Subscription Fees in relation to your Subscription will immediately become due.

## 9. The Digital Learning Centre

- 9.1. From time to time we may change or add to the Learning Materials on the Digital Learning Centre. We may contact you in accordance with the Privacy Notice about these changes.
- 9.2. We will try to make sure that our Website or the Learning Materials are free from viruses, however, we cannot guarantee this. We recommend that you use your own virus-protection software.
- 9.3. We cannot guarantee that our Website will be compatible with your browser or computer set-up, or that your access to our Website will not be interrupted (this may be beyond our control).
- 9.4. From time to time we may temporarily stop providing access to our Website, for maintenance, repairs or other reasons. If possible, we will try to make sure this happens outside normal business hours.

## 10. Data Protection

- 10.1. For the purposes of this Agreement, the parties agree that you are the Data Controller in respect of Personal Data contained within Customer Data ("**Customer Personal Data**") and as Data Controller, you have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 10.2. You warrant and represent that:
  - 10.2.1. you will comply with and will ensure that your instructions for the Processing of Customer Personal Data will comply the Data Protection Laws;
  - 10.2.2. you are authorized pursuant to the Data Protection Laws to disclose any Customer Personal Data which you disclose or otherwise provide to us regarding persons other than yourself;
  - 10.2.3. 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:
    - 10.2.3.1. you to disclose the Customer Personal Data to us;



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- 10.2.3.2. us to Process the Customer Personal Data for the purposes set out in this Agreement; and
  - 10.2.3.3. us to disclose the Customer Personal Data to: (i) our agents, service providers and other companies within the Sage group of companies; (ii) law enforcement agencies; (iii) any other person in order to meet any legal obligations on us, including statutory or regulatory reporting; and (iv) any other person who has a legal right to require disclosure of the information, including where the recipients of the Customer Personal Data are outside the South African Economic Area.
- 10.3. To the extent that Sage Processes any Customer Personal Data, the terms of Exhibit A shall apply, and the parties agree to comply with such terms.
- 10.4. Where, and to the extent we Process your Personal Data as a Data Controller in accordance with our Privacy Notice, we shall comply with all Data Protection Laws applicable to us as Data Controller.
- 10.5. You agree that we may record, retain and use Customer Data generated and stored during your use of the Digital Learning Centre (including Customer Personal Data, which we shall Process as Data Controller as set out in our Privacy Notice, on the basis of our legitimate business interests), in order to:
- 10.5.1. deliver advertising, marketing (including in-product messaging) or information to you which may be useful to you, based on your use of the Digital Learning Centre;
  - 10.5.2. carry out research and development to improve our, and our group companies', services, products and applications;
  - 10.5.3. develop and provide new and existing functionality and services (including statistical analysis, benchmarking and forecasting services) to you and other Sage customers;
  - 10.5.4. provide you with location-based services (for example location relevant content) where we collect geo-location data to provide a relevant experience,

provided that Sage shall only record, retain and use the Customer Data and/or Process Customer Personal Data on a pseudonymized basis, displayed at aggregated levels, which will not be linked back to you or to any living individual. If at any time you do not want us to use Customer Data in the manner described in this clause, please contact us at the email address set out in the Privacy Notice.

## 11. Commencement and Term

- 11.1. Your Subscription shall commence on the Effective Date and shall continue for a period of one (1) month and thereafter, your Subscription shall be automatically renewed for successive periods of one (1) month (each a "**Renewal Period**"), unless and until:
- 11.2. we notify you of termination, in writing, at any time in which case your Subscription shall terminate upon the expiry of the applicable Renewal Period;
- 11.3. you write to us and instruct us that you wish to terminate your Subscription, after which your Subscription will terminate upon expiry of the applicable Renewal Period; or
- 11.4. your Subscription is otherwise terminated in accordance with the terms of this Agreement.

## 12. Termination

- 12.1. We may terminate your Subscription and this Agreement in writing with immediate effect if you:
  - 12.1.1. fail to pay any Subscription Fees by the due date; or
  - 12.1.2. are in material breach of any terms of this Agreement; or
  - 12.1.3. violate any part of clause 7. Any outstanding Subscription Fees in relation to your Subscription will become immediately due and payable by you; or
  - 12.1.4. are unable to pay your debts, or become insolvent, bankrupt, stop trading, are subject to an order or a resolution for your liquidation, administration, winding-up, dissolution, have an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of your assets, or enter into or proposes any composition or arrangement with your creditors generally, or are subject to any analogous event or proceeding in any applicable jurisdiction; or

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- 12.1.5. sell all of your assets or are merged or re-organized in circumstances where you are not the surviving entity.
- 12.2. Termination by us in accordance with our rights under clause 12.1 is without prejudice to any other of our rights or remedies accrued prior to termination.
- 12.3. On termination pursuant to clause 12.1 all rights granted to you under this Agreement and the license granted pursuant to clause 5 shall immediately cease.
- 12.4. Ending your Subscription will not prejudice any clause which is expressed or by its nature implied to remain in effect after your Subscription has ended and will not prejudice any right of either party which has accrued on or before your Subscription has ended.
- 12.5. On termination of this Agreement for any reason:
  - 12.5.1 you will cease using the Digital Learning Centre;
  - 12.5.2 we will destroy or otherwise dispose of beyond retrieval any Customer Data in our possession at the end of the Data Retention Period. If we receive a written request from you during the Data Retention Period for the extraction and delivery of the then most recent back-up of your Customer Data (where applicable), we will use reasonable commercial endeavors to deliver the back-up within 30 days of receipt of such a written request, provided that all Subscription Fees outstanding at and resulting from termination (whether or not due at the date of termination) are paid. You will also be required to pay all reasonable expenses incurred by us in returning or disposing of Customer Data. Following delivery of the most recent back-up of your Customer Data we will then destroy or otherwise dispose of beyond retrieval any Customer Data in our possession; and
  - 12.5.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.
- 12.6. No matter how this Agreement ends, your Customer Data remains your data and you are entitled to extract it from the Digital Learning Centre before the end of your Subscription. However, your failure to extract your Customer Data will not prevent this Agreement ending. Throughout your Subscription you should take back-up copies of your Customer Data.

## 13. General terms

- 13.1. If we quote you a price, on our website or by phone, for access to and use of the Digital Learning Centre, that price will be confirmed in the Documentation.
- 13.2. 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, which will remain binding on both of us. However, if the wording that cannot be enforced could be enforced if part of it is deleted, we will both treat the relevant part of the wording as if it is deleted.
- 13.3. This Agreement is the entire agreement between you and us relating to the Digital Learning Centre and replace all documents, information and other communications (whether spoken or written) between us for such use and you agree that you have not relied upon any such documents, information and other communications in entering into this Agreement.
- 13.4. You must not assign or transfer this Agreement to anyone else. We may assign or transfer this Agreement to another organization which is part of our group of companies at any time.
- 13.5. If circumstances beyond our reasonable control arise, we will not be liable for failing to meet our responsibilities in this Agreement for as long as those circumstances continue.
- 13.6. The construction, validity and performance of this Agreement shall be governed by South African Law and the Parties submit to the exclusive jurisdiction of the South Gauteng High Court with regard to any dispute arising out of this Agreement.

## 14. Anti-Bribery and Conflict of Interest

- 14.1 The Parties shall ensure that persons associated with them:
  - 14.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the "Relevant Requirements");
  - 14.1.2 not engage in any activity, practice or conduct which would constitute an offence any of the Relevant Requirements;
  - 14.1.3 not do, or omit to do, any act that may lead us to be in breach of any of the Relevant Requirements;
  - 14.1.4 promptly report to us any request or demand for any undue financial or other advantage received by you in connection with this Agreement;
  - 14.1.5 have and maintain in place throughout the term of this Agreement, their own policies and

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- procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- 14.1.6 if requested, provide us with reasonable assistance, to enable us to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements.
  - 14.2 Each Party agrees to indemnify the other against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, us as a result of your breach of this Clause 14.
  - 14.3 Each Party shall promptly notify the other Party if, at any time during the term of this Agreement if its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 14 at the relevant time.
  - 14.4 You shall ensure that no Conflict of Interest arises between the interests of Sage and Your interests. You shall notify Sage in writing as soon as is practically possible of any potential Conflict of Interest and shall follow Sage's reasonable instructions to avoid, or bring to an end, any Conflict of Interest. For the purpose of this Agreement, "Conflict of Interest" means a situation which You have competing interest or loyalties which could impact their ability to act objectively and fairly in Your capacity.
  - 14.5 In the event that You become aware of the You or Your Personnel and Associated Companies breaching the obligations under this clause 14, You shall notify Sage immediately and provide all relevant information to Sage to allow Sage to take any and all actions as it deems appropriate including but not limited to refusing to allow the relevant party to deal with Software.
  - 14.6 Breach of this clause 14 shall be deemed a material breach incapable of being remedied under this Agreement.