

# IFA Referral Programme

## Terms and Conditions

Last updated: July 2014



IMPORTANT: YOU SHOULD READ ALL OF THIS AGREEMENT TO CHECK THAT YOU AGREE TO IT. BY ENTERING YOUR DETAILS TO BECOME A SAGE IFA REFERRAL PARTNER AND TICKING A BOX (OR SOMETHING SIMILAR) YOU SIGNIFY YOUR ACCEPTANCE OF THESE TERMS.

BY ACCEPTING THIS AGREEMENT YOU AGREE THAT:

- YOU ARE AUTHORISED TO ACCEPT IT ON BEHALF OF THE BUSINESS ENTITY WHICH YOU REPRESENT; AND
- YOU, AND THE BUSINESS ENTITY WHICH YOU REPRESENT, ARE BOUND BY AND WILL COMPLY WITH ALL OF ITS TERMS.

If you do not accept this Agreement, we do not permit you to become a Sage IFA Referral Partner.

We may amend this Agreement at any time and the most recent versions can be accessed at <http://www.sage.co.uk/legal/index.html>. We will make reasonable efforts to communicate any changes to you by sending an email to your user address but it is your responsibility to ensure that you regularly read, understand and agree to the most recent version of this Agreement. You will be deemed to accept any amendments to this Agreement if you continue to take advantage of the benefits of the IFA Referral Programme or refer any customers to Sage.

### 1 Definitions and Interpretation

The following definitions and rules of interpretation shall apply in this Agreement:

1.1	<b>Affiliate</b>	in relation to any company, that company's parent company or any subsidiary of any such parent company as defined in section 1159 of the Companies Act 2006;
	<b>Commencement Date</b>	the date we accept your application to join our IFA Referral Programme;
	<b>Commission</b>	20% of the subscription fee of the initial Service purchased by each Customer calculated and payable in accordance with clause 4;
	<b>Confidential Information</b>	any information which is disclosed pursuant to or in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential) or which otherwise comes into the hands of a party which is either proprietary to a party or would be confidential by operation of law, or which is expressly stated by the disclosing party to be confidential or sensitive information. Such information includes without limitation: information which relates to administrative, structural, financial, technical or operational arrangements, data, know-how, intellectual property including software programs (including source, object and assembly code), strategies, lists of customers, suppliers and other contractors, trade secrets, processes, algorithms, research, specifications and any visual images or observations made while on the premises of a party;
	<b>Customer</b>	a customer who: (i) is referred by you to us; (ii) has placed an order with us for the Service (which has been accepted by us); and (iii) we are in receipt of payment from that customer for their subscription fee for that Service in accordance with clause 4 but not: (a) any customer who is an existing customer of ours for the Service (or any part thereof); or (b) where we have been or are in discussions with a customer regarding the Service (or any part thereof) and, in the case of both (a) and (b), in the six month period immediately preceding the date that you refer that customer to us;
	<b>IFA Referral Programme</b>	the referral programme we make available to IFAs for the benefit of their customers subject to the terms and conditions set out in this Agreement;

<b>Intellectual Property Rights</b>	all vested contingent and future intellectual property rights including goodwill, reputation, rights in confidential information, rights to sue for passing off or unfair competition, copyright, trademarks and design rights whether registered or unregistered, logos, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, patents, know how, trade secrets, inventions, get-up, database rights and (as applicable) any applications or registrations for the protection of these rights and renewals and extensions of them, existing in any part of the world, whether now known or created in the future;
<b>Partner Link</b>	a reference or account number or other mechanism provided by us which allows a Customer to identify themselves as being referred for the Services by you and triggers your entitlement to the Commission in accordance with clause 4;
<b>Sage Mark</b>	any name, trademark, insignia, logo, symbol or slogan (whether registered or not) owned or used by us or any of our Affiliates now or in the future anywhere in the world, including but not limited to the word mark "Sage" which we permit you to use solely for the purpose of fulfilling your obligations under this Agreement;
<b>Sage or us or we or our</b>	Sage (UK) Limited (company registration number 01045967) whose registered office is at North Park, Newcastle upon Tyne, NE13 9AA;
<b>Service</b>	the subscription payroll software services to be sold by Sage immediately following a referral by you of the Customer including Sage 50 Payroll Auto-Enrolment Edition and, where agreed by us, the Sage 50 Payroll Pensions Module (and any subsequent new versions or editions of the core Sage 50 payroll product) and such other products or services agreed in writing by us from time to time;
<b>Working Days</b>	any day other than a Saturday, Sunday or public holiday when the banks in London are open for business; and
<b>you or your</b>	the party agreeing to be bound by these terms and conditions and registering for the IFA Referral Programme.

- 1.2 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.3 Any reference to the singular will include the plural and vice versa.
- 1.4 Words importing natural persons shall include bodies corporate and other legal personae and vice versa.
- 1.5 References to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 The headings are for convenience only and shall not affect the construction of these terms.
- 1.7 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 Appointment

- 2.1 In consideration of the mutual obligations set out in this Agreement and the payment of the Commission, you agree to promote our Services on a non-exclusive basis and refer Customers to us in accordance with this Agreement.
- 2.2 If requested by us, you agree to meet us, either by telephone or at an agreed location and at such regular intervals to be agreed (but to be no less frequent than annually) during the period of this Agreement to review your performance in respect of the promotion of the Services, the referral of Customers and any queries in respect of the payment of the Commission.

## 3 Referrals

- 3.1 As soon as reasonably practicable following the Commencement Date, we will provide you with a Partner Link and details of supporting materials regarding our IFA Partner Programme, the Service and Commission.
- 3.2 You agree to refer Customers to us and provide them with your Partner Link.
- 3.3 You will not publish details of your Partner Link in any media, website or social media channel (including Facebook and Twitter) unless specifically agreed by us in writing in advance.
- 3.4 Where a Customer purchases a subscription from us to use the Service and at the point of sale quotes your Partner Link, we will then implement the process to pay your Commission in accordance with clause 4.
- 3.5 A Customer's use of the Services is subject to the standard terms and conditions which relate to their subscription in place from time and time and provided to them prior to purchasing the Services as set out at [www.sage.co.uk/legal/terms-conditions/product-services-terms.html](http://www.sage.co.uk/legal/terms-conditions/product-services-terms.html) from time to time.

## 4 Payment & Commission

- 4.1 Customers are liable to make payment for their use of the Services direct to us. Commission is payable to you only in respect of cleared funds which we have received in full from the Customer as more particularly described in this clause 4.
- 4.2 We set and revise fees and payment terms for the Services from time to time at our absolute discretion.
- 4.3 The Commission will be calculated as a percentage of the subscription fee paid by each Customer at the time that it initially purchases the Services immediately following the referral by you of the Customer and shall remain at that level (in respect of each Customer) for the Commission Period (as defined in 4.9 below) irrespective of whether the Customer upgrades or downgrades the services purchased from us.
- 4.4 Any and all Commission due to you shall be accrued monthly but shall be paid to you quarterly in arrears in accordance with this clause 4 (unless we advise you of such other billing periods).
- 4.5 We will notify you in writing of (i) the quarterly periods we will use to calculate the Commission; (ii) the dates upon which we will pay the Commission payable to you; and (iii) the value of the Commission payable in respect of each Customer.
- 4.6 The Commission will only be payable following receipt by us of the subscription fees in cleared funds for the Services in full for each of the three consecutive months constituting a quarter, except that the first payment of the Commission will be calculated to reflect the actual sum due from the date the Customer first purchases the Services to the first payment date for the first quarter, calculated on a pro rata basis. In the event that a Customer defaults in or fails to make payment to us in full for their subscription fee in any quarter, your entitlement to receive Commission for that Service will cease with immediate effect and without notice.
- 4.7 Payment will be made via electronic transfer to such bank account as you may notify to us in writing from time to time and payment shall be made within 15 days of the end of each quarter unless we notify you otherwise.
- 4.8 We may, at any time and without notice, set off any liability of yours (including, without limitation, any outstanding balances you may owe to us) from the Commission and whether that liability is present or future, liquidated or unliquidated, and whether or not it arises under this Agreement. Any exercise by us of our rights under this clause shall not limit or affect any other rights or remedies available to us under this agreement or otherwise.

### *Restrictions around the Payment of Commission*

- 4.9 We will only pay you Commission in respect of any Customer for the shorter period of (i) the duration that the Customer continues to pay their subscription fee in full for their use of the Services; (ii) the duration of this Agreement (iii).three years from the date the relevant Customer first purchases the Services (“the Commission Period”).
- 4.10 Once a Customer no longer subscribes to the Services or this Agreement expires or is terminated, or the relevant Commission Period ends you will no longer be entitled to receive Commission for that Customer.
- 4.11 If, during any quarter, a Customer fails to pay their subscription fee for their use of the Services and/or their agreement with us to use the Services is terminated, your entitlement to Commission will be calculated on a pro rata basis for that quarter (the “**final Commission payment**”). You will not be entitled to receive any further Commission for that Customer once you have received the final Commission payment and this will apply even where that customer subsequently recommences the payment of its subscription fee to use the same or equivalent services.

### *Self-Billing and VAT*

- 4.12 Unless we advise you otherwise, if you are VAT registered you will only be entitled to receive Commission if you have entered into and maintain a valid self-billing agreement with us for VAT purposes. This is because we will pay you Commission against a self-billing VAT invoice which we will raise on your behalf. We will provide you with a self-billing agreement (including, without limitation, any renewals of that agreement) which you must sign and return to us in such form (and in accordance with such instructions) as we may provide you from time to time.
- 4.13 Where you are VAT registered (and unless we have advised you otherwise), you understand and agree that in order for us to calculate and pay you Commission during any quarter we must have a valid and binding self-billing agreement in place between us. This means that we will not be required to pay you any Commission which accrues during a period where we have no self-billing agreement in place.
- 4.14 If you are VAT registered, you will provide us with your VAT registration number and such other information as we may reasonably require in the performance of our obligations under this agreement and you will advise us immediately in writing if there is any change to your VAT registration number or your VAT status.
- 4.15 If you are not VAT registered, we will pay you Commission at the end of each quarter in accordance with the terms and conditions of this agreement. If, at any time, you become VAT registered you will notify us in writing within 7 days of making that registration and you will promptly enter into a self-billing agreement with us pursuant to clauses 4.11 and 4.12 above to enable us to pay you Commission.

- 4.16 Any queries regarding the application or payment of the Commission should be raised by sending an e-mail to ifa.advice@sage.com.

## 5 Your Obligations

- 5.1 You warrant and represent to us that throughout the term of this Agreement, you will:
- 5.1.1 perform your obligations under this Agreement and promote the Services in compliance with all applicable laws, rules, regulations and codes of practice, including those applicable to data protection and marketing;
  - 5.1.2 hold all necessary consents, permissions and regulatory approvals necessary to perform your obligations under this Agreement;
  - 5.1.3 make it clear to Customers that they are entering into a contract for the provision of Service with us and not you, and that you are not our agent;
  - 5.1.4 discharge your obligations under this Agreement with all due skill, care and diligence in accordance with best industry practice;
  - 5.1.5 not make any promises or representations or enter into contracts on our behalf in respect of the Services;
  - 5.1.6 not participate in any practices which may be detrimental to the Services, us or our business and reputation (or of any of our Affiliates); and
  - 5.1.7 maintain authorisation with the Financial Conduct Authority to act as an independent financial adviser for the duration of this Agreement.
- 5.2 You shall from the Commencement Date procure and maintain your own insurances in relation to your business as an independent financial adviser and any activities you perform in accordance with your obligations under this Agreement (in this clause the "Insurances"), with insurers which are acceptable to us (such acceptance not to be unreasonably withheld or delayed), to cover your own liabilities and those of your personnel under this Agreement. The Insurances are to include, but are not limited to:
- 5.2.1 public liability insurance to cover any losses that occur during the period of this Agreement, with a minimum level of indemnity of £5 million per incident, and unlimited in the aggregate, and an excess of no more than £5,000; and
  - 5.2.2 professional indemnity insurance throughout the period of this Agreement, and for a period of 15 years thereafter, with minimum level of indemnity of £5 million, and an excess of no more than £5,000.
- 5.3 You shall indemnify and keep us fully indemnified from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us arising out of or in connection with any breach by you of this Agreement.

## 6 The Bribery Act 2010

- 6.1 You will:
- 6.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
  - 6.1.2 have and shall maintain in place throughout the term of this agreement your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
  - 6.1.3 promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of this Agreement;
  - 6.1.4 immediately notify to us (in writing) if a foreign public official becomes an officer or employee of your business or acquires a direct or indirect interest in your business (and you warrant that you have no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
  - 6.1.5 within three months of the date of this Agreement, and annually thereafter, certify to us in writing signed by an officer of your business, your compliance with this clause 6 and all persons associated with your business under clause 6.2. You shall provide such supporting evidence of compliance as we may reasonably request.
- 6.2 You shall ensure that any person associated with you, who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this clause 6 ("Relevant Terms"). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.
- 6.3 Breach of this clause 6 shall be deemed a breach of a material term under clause 7.2.3.
- 6.4 For the purpose of this clause 6, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 6 a person associated with you includes but is not limited to any subcontractor(s) you may utilise from time to time.

## 7 Duration and Termination

- 7.1 This Agreement shall commence on the Commencement Date and, subject to clause 7.2, shall

- continue in force until either party terminates by providing not less than 30 days written notice to the other at any time.
- 7.2 Without prejudice to any rights that have accrued under this Agreement or any of your or our other rights or remedies, either of us may terminate this Agreement immediately on written notice to the other if:
- 7.2.1 the other party commits a breach of any term of this Agreement and (if such breach is remediable) fail to remedy that breach within a period of 14 days after being notified by the other party to do so; or
  - 7.2.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that the other party's conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
  - 7.2.3 the other party breaches a material term of this agreement; or
  - 7.2.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or are deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 7.2.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - 7.2.6 a petition filed, or a notice is given, or a resolution is passed, or an order is made, for or on connection with the other party's winding up (being a company); or
  - 7.2.7 an application made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company); or
  - 7.2.8 a floating charge holder over the other party's assets (being a company) has become entitled to appoint or has appointed an administrative receiver; or
  - 7.2.9 a person becomes entitled to appoint a receiver over the other party's assets or a receiver is appointed over its assets; or
  - 7.2.10 the other party suspends or ceases, or threatens to suspend or cease, to trade; or
  - 7.2.11 any event occurs, or proceeding is taken, with respect to you in any jurisdiction that has an effect equivalent or similar to any of the events mentioned in clauses 7.2.3 to 7.2.10.
- 7.3 We may terminate this Agreement immediately on written notice if there is a change in your control.

## **8 Effect of termination**

- 8.1 On termination of this Agreement for any reason, you will:
- 8.1.1 immediately cease promoting the Services and describing or holding yourself out as connected with us in any way;
  - 8.1.2 discontinue use of any Sage Mark; and
  - 8.1.3 destroy and/or return to us (at our election) all of our materials and other documentation which you obtained in relation to or as a result of your appointment under this Agreement.
- 8.2 You agree that during the term of this Agreement and for a period of six (6) months after termination you will not actively solicit any customers you referred to Sage to move to a different service provider for services or products that are the same as or similar in nature to the Services.
- 8.3 Any termination of this Agreement shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement, which is expressly or by implication intended to come into force or continue in force on or after termination.

## **9 Liability**

- 9.1 Nothing in this Agreement limits or excludes our liability for death or personal injury resulting from negligence or for any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1 we will not be liable for:
- 9.2.1 loss of profits; or
  - 9.2.2 loss of business; or
  - 9.2.3 depletion of goodwill and/or similar losses; or
  - 9.2.4 loss of anticipated savings; or
  - 9.2.5 loss of goods; or
  - 9.2.6 loss of customers or contracts; or
  - 9.2.7 loss or corruption of data or information; or
  - 9.2.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
- arising from breach of this Agreement or any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 9.3 You acknowledge that we will have no liability to you in any circumstances where any Customer does not use the Partner Link when subscribing for the Service.
- 9.4 Subject to clause 9.1, our liability to you under or in connection with this Agreement arising from tortious act or omission including negligence, breach of contract or statutory duty, and any other liability, will not exceed in aggregate the greater of:
- 9.4.1 £100; or



- 9.42. the total amount of Commission attributable to the affected Customer in the 12 calendar month period immediately preceding the date on which the incident leading to the claim arose.

## **10 Intellectual Property Rights**

- 10.1 You agree that we (or our licensors) or our Affiliates (as applicable) own and will continue to own our Intellectual Property Rights, including without limit any Sage Mark, and other than as permitted under this Agreement, you will not use, or permit any third party to use, any of our Intellectual Property Rights, including without limit any Sage Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any Sage Mark, without first obtaining our prior written consent.
- 10.2 During the term of this Agreement, you may use the relevant Sage Mark only to promote the Services in accordance with this Agreement and as prescribed by us from time to time. If requested by us, you will submit any promotional, marketing or other materials used in relation to the Services to us for approval prior to using them.
- 10.3 You agree not to use any Sage Mark as part of your corporate or business name and always to display your corporate or business name and the relevant Sage Mark in accordance with our guidance.
- 10.4 You agree not to use, create or register (or attempt to register) or allow a third party to register or use (or attempt to do so) without our prior written consent:
- 10.4.1 any trade mark which incorporates any Sage Mark or any similar mark, logo, words, device or any other branding, without our prior written consent.
  - 10.4.2 as a domain name any Sage Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any Sage Mark.
  - 10.4.3 as an AdWord (or any similar marketing tool), any Sage Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any Sage Mark.
- 10.5 During the term of this Agreement you grant to us a non-exclusive right to use your Intellectual Property Rights in relation to the promotion of the Services and/or the administration of any contract with Customers, subject to our compliance with your guidance (as notified by you to us) in relation to use of those Intellectual Property Rights from time to time.

## **11 Confidentiality**

- 11.1 The parties undertake that they shall not at any time copy, use or disclose to any person any Confidential Information, except as permitted by this Agreement.
- 11.2 The parties may disclose Confidential Information:
- 11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out its obligations under this Agreement. The parties shall ensure that their employees, officers, representatives or advisers to whom the Confidential Information is disclosed comply with this clause 11; and
  - 11.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 11.3 Neither you or we will use the other's Confidential Information for any purpose other than to perform your or our obligations under this Agreement.

## **12 General terms**

- 12.1 Any notice required to be given pursuant to this Agreement will be in writing and will be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the address of the relevant party set out in this Agreement, or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and two Working Days following postage (if sent by post).
- 12.2 This Agreement is personal to you and may not be assigned, subcontracted, licensed (including sub-licensed), charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent. This means for example, that if you sell the assets of your business, you cannot automatically transfer this Agreement to the buyer. We may transfer, assign, subcontract, license, charge or otherwise deal with or dispose of (whether in whole or in part) this Agreement at any time without your consent.
- 12.3 This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it. You and we both acknowledge that we have 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 your or our liability for fraud.
- 12.4 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions, which shall remain in full force and effect.
- 12.5 Nothing in this Agreement is intended to or will operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party will have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). The parties agree that they are independent contractors and neither will represent itself

- as agent, servant, franchisee, joint venturer or partner of, or endorsed by, the other
- 12.6 Neither of the parties shall be liable to the other for any failure to perform or for any delay in performance under this Agreement (other than an obligation to pay monies) to the extent such non-performance or delay is caused by any circumstances beyond the defaulting party's reasonable control including fire, war, civil commotion, any act of central or local government, any industrial disputes, lockouts and strikes of any third party.
  - 12.7 A waiver (whether express or implied) by either of the parties of any of the provisions of this Agreement shall not constitute a continuing waiver and that waiver shall not prevent either party from enforcing any of the other provisions of this Agreement.
  - 12.8 Except as expressly set out in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise, to enforce any terms of this Agreement.
  - 12.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising out of or in connection with this Agreement or the legal relationships established by this Agreement.