

# Sage People Master Professional Services Agreement (MPSA) – Replaced on 03/01/2020

BY SIGNING A WORK ORDER AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF OUR SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT USE OUR SERVICES.

This Agreement was updated on April 1, 2019. Previous versions of this agreement are available [here](#) for reference.

It is hereby agreed that:

## 1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with, the subject entity, where “control” is the direct or indirect ownership or control of at least a majority of the voting rights in the entity, or otherwise the power to direct the management and policies of the entity. An entity is an Affiliate only so long as such control continues.

“Agreement” means these professional services terms, any addendums, exhibits and schedules hereto, and your Order.

“Data Protection Laws” means all applicable laws and regulations governing the use or processing of personal data, including the General Data Protection Regulation (EU) 2016/679 (GDPR) and any national laws implementing, supplementing or superseding the foregoing.

“Deliverable” means all documents, products and materials developed by us for the Services.

“Discovery Document” means the document issued by us, and approved by you, following a discovery workshop at the beginning of an implementation project which details the agreed-upon requirements for the implementation project.

“Effective Date” means the date (i) this Agreement is signed by you, or (ii) if entered into electronically the date on which you signify your acceptance of this Agreement in accordance with the procedures specified from time to time by us.

“Force Majeure Event” means an act of God (e.g. a natural disaster, accident or epidemic) or another event outside of a party’s reasonable control (e.g. acts of war, terrorism, government authority or by another third party outside the party’s control).

“Intellectual Property Rights” means rights recognised by any jurisdiction with respect to intellectual work product, such as patent rights (including priority rights), design rights, copyrights (including moral rights), mask work rights, trade secret rights, trademarks, service marks, know-how and domain name rights.

“Order” means an ordering document issued by us (also known as a “work order”) and signed by you and us for our provision of professional services.

“Services” means the professional services described in your Order.

“Subscription Agreement” means the Sage People Subscription Agreement entered into between you and us for access to our online, web-based software applications.

“we”, “us” or “our” means Sage People Limited (registered company no. 06221457) of North Park, Newcastle Upon Tyne, United Kingdom, NE13 9AA.

“you” or “your” or “Customer” means the person accepting this Agreement, provided that if such acceptance is on behalf of a company or other legal entity then: (i) the signatory represents that they have the authority to bind such entity to the terms of this Agreement; and (ii) “you” and “your” or “Customer” refers to such entity and, to the extent any of your Affiliates use the Services, such Affiliates.

Other capitalised terms have the respective meanings given to them elsewhere in this Agreement.

## **2. SERVICES AND DELIVERABLES**

2.1. Provision. We shall provide the Services to you on the terms and conditions of this Agreement. We shall perform the Services, and deliver the Deliverables to you, (i) pursuant to your Order in all material respects and (ii) using reasonable skill and care. We shall do so in accordance with any delivery date or timetable in your Order, but any such dates are estimates only and our time for performance

of the Services and delivery of the Deliverables shall not be of the essence. In order to assist with meeting estimated delivery dates or timetables, each party must devote sufficient resources (with appropriate technical and project management experience) to each Order. Upon reasonable prior written notice to you, we may subcontract all or any of the Services and we will remain responsible to you for such subcontracted Services as if we performed them. You may not use the Services or any Deliverables to build a competitive product or service or to benchmark with a non-Sage product or service.

2.2. Cooperation. The parties shall reasonably cooperate with each other in all matters relating to the Services. Without limiting the foregoing, you shall make available to us the data, facilities, resources, documentation and other information we reasonably request to enable us to perform the Services and deliver the Deliverables. You must also maintain adequate backups of all data that you provide us.

2.3. Acceptance. You shall notify us in writing of any failure of the Services or Deliverables to comply with this Agreement within 30 days of completion of those Services or delivery of the Deliverables. Absent such a written rejection, acceptance shall be deemed to have occurred 31 days following your receipt of such Services or Deliverables.

2.4. Relationship to Subscription Agreement. The Services and Deliverables provided under this Agreement relate to your right to access and use applications provided under the Subscription Agreement. The Subscription Agreement governs all use of such applications. Neither this Agreement nor any Order hereunder grants you any licence or rights to use such applications. All of the Subscription Agreement's disclaimers regarding "Third-Party Services" and "Third-Party Providers" are incorporated herein by reference and apply to the Services provided under this Agreement.

### **3. FEES AND PAYMENT**

3.1. Orders. All fees and other applicable charges will be as set out in your Order. Expenses may be charged as permitted by section 3.3, below. Unless stated otherwise in your Order, all fees, charges and expenses due will be invoiced monthly and payable within 30 days of the invoice date. You may only withhold the portion of an invoice that you dispute in good faith if you provide us (by the applicable invoice due date) with a written notification describing in reasonable detail the basis for such withholding and timely pay the undisputed portion of such invoice.

3.2. Basis for Billing. Unless stated otherwise in your Order, all Services are provided on a time and materials basis at the rates set out in your Order. Any estimate of cost, effort or timescale is non-binding guidance only, but may be exceeded upon your prior written consent. We shall provide you with our timesheets at the end of each week for the Services provided during that week.

3.3. Expenses. Unless stated otherwise in your Order, we may charge for our travel and related out-of-pocket expenses reasonably incurred by the individuals performing the Services. Unless stated otherwise in your Order, we may also charge for traveling time, to and from your premises, at our then applicable rate.

3.4. Rate Changes. We may review and increase our rates at any time. We shall give you at least 3 months' notice of any proposed rate increase. If you do not accept the increase, you may terminate this Agreement pursuant to section 6.2.

3.5. Taxes. All fees are exclusive of applicable taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for their payment, excluding taxes on our net income.

3.6. Late Payment; Non-Payment. If any fees are not received by us by the due date, interest of 4% above the base rate of the Bank of England shall be payable on any overdue balance. Non-payment of any fees due by you to us is a material breach of this Agreement.

3.7. Suspension. In addition to any other rights we may have, we may suspend providing any Services if you fail to pay any invoice within 30 days of receiving notice that payment is overdue. We will only exercise our suspension rights after providing you with 3 days' notice.

#### **4. PROPRIETARY RIGHTS**

4.1. Services and Deliverables. Subject to the limited rights expressly granted hereunder, as between the parties we own all rights, title and interest, including all Intellectual Property Rights, in and to Deliverables and any other materials we use or provide in providing the Services. We grant all such rights to you on a non-exclusive, worldwide basis to the extent necessary to enable you to make reasonable use of the Deliverables and the Services. All rights not expressly granted in this Agreement are reserved by us. The Sage names and logos and the product names associated with the Services are our or our licensors' trademarks, and no right or licence is granted under this Agreement to use them.

4.2. Other Materials. Where we do not own materials used in performing the Services, including content that you wish to upload and third party software you operate, your use of rights in those materials is conditioned upon obtaining a written licence (or sublicense) from the relevant licensor or licensors.

## **5. CONFIDENTIALITY AND DATA SECURITY**

5.1. Confidential Information. “Confidential Information” means all information of a party or its Affiliates (“Discloser”) disclosed to the other party or its Affiliates (“Recipient”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The terms of your Order, the Services and the Deliverables are our Confidential Information.

5.2. Exceptions. Confidential Information excludes: (i) information that was known to the Recipient without a confidentiality restriction prior to its disclosure by the Discloser; (ii) information that was or becomes publicly known through no wrongful act of the Recipient; (iii) information that was rightfully received from a third party authorised to make such disclosure without restriction; (iv) information that has been independently developed by the Recipient without use of, or reference to, the Discloser’s Confidential Information; and (v) information that was authorised for release in writing by the Discloser.

5.3. Confidentiality Obligations. The Recipient will use the same degree of care as it uses for its own confidential information of like nature, but no less than reasonable care, to protect the Discloser’s Confidential Information from any use or disclosure not permitted by this Agreement or authorised by the Discloser. The Recipient may disclose the Discloser’s Confidential Information to its employees, Affiliates and service providers who need access to such Confidential Information to effect the intent of this Agreement, provided that they are bound by confidentiality obligations no less restrictive than those herein.

5.4. Disclosure Required by Law. The Recipient may disclose Confidential Information to the extent required by court or administrative order or law, provided that the Recipient provides advance notice thereof (to the extent permitted) and reasonable assistance, at the Discloser’s cost, to enable the Discloser to seek a protective order or otherwise prevent or limit such disclosure.

5.5. Injunctive Relief. A breach of the Recipient’s confidentiality obligations may cause irreparable damage, which money cannot satisfactorily remedy, and therefore the Discloser may seek injunctive relief for any threatened or actual

breach of section 5 without the need to prove damages or post a bond or other surety.

5.6. Data Privacy. The Data Processing Addendum under the Subscription Agreement is incorporated and forms part of this Agreement to reflect the parties' agreement with regard to the processing of the Customer's personal data, in accordance with the requirements of the Data Protection Laws.

## **6. TERM AND TERMINATION**

6.1. Term. This Agreement commences on the Effective Date and shall continue unless and until terminated.

6.2. Termination for Convenience. Either party may terminate this Agreement for convenience by giving at least 90 days written notice to the other party.

6.3. Termination for Cause or Change in Control. Either party may terminate this Agreement for cause: (i) with written notice to the other party of a material breach of this Agreement which is incurable or, if curable, which remains uncured for 30 days after such notice; or (ii) to the extent permitted by applicable law, upon written notice to the other party after the other party becomes the subject of a petition in bankruptcy or other proceedings relating to insolvency or makes an assignment for the benefit of creditors. If you materially breach this Agreement, we may temporarily suspend your access to the Services or withhold further performance of our obligations under this Agreement. We may also terminate this Agreement upon written notice if there is a change in control that results in you being an Affiliate of any of our direct competitors.

6.4. Effect of Termination. On termination of this Agreement: (i) for convenience pursuant to section 6.2, any outstanding Orders shall either (a) be completed prior to such termination where possible and the Agreement shall be deemed to continue in relation to such Order until the Services are completed, or (b) be terminated with the mutual agreement of the parties and you shall pay us for our time and material costs and expenses up to the date of termination; and (ii) pursuant to section 6.3, all outstanding Orders shall also terminate and you shall pay us for our time and material costs and expenses up to the date of termination.

Regardless of the basis for expiration or termination, upon termination or expiration of this Agreement, a party's rights, remedies, obligations or liabilities that have accrued up to the date of termination, including any claim for damages from pre-existing breach, shall not be affected. Further, subject to section 6.5, Recipient shall, at the request of Discloser, delete or destroy Discloser's

Confidential Information in its possession or control. Notwithstanding the foregoing, Recipient may retain Discloser's Confidential Information (a) to the extent required by law or governmental authority, or (b) that is automatically stored in accordance with Recipient's generally applicable backup policies ("Backup Media"). All Backup Media shall remain subject to the confidentiality obligations set forth herein, notwithstanding the expiration or termination of this Agreement, so long as it remains undeleted.

6.5. Survival. Any provision of this Agreement that expressly or by implication is intended to operate after expiration or termination of this Agreement shall remain in full force and effect.

## **7. WARRANTIES**

7.1. Authority. Each party represents to the other that it has the authority to enter into this Agreement, to carry out its obligations under it, and to give the rights and licences granted herein.

7.2. Our Warranties. We warrant that: (i) we will perform the Services and deliver the Deliverables pursuant to section 2.1; and (ii) the Services and Deliverables will conform substantially to any description or specification of such Services and Deliverables provided to you in an Order or Discovery Document.

7.3. Remedies. If you notify us in writing that the Services or Deliverables do not conform with any of the warranties in section 7.2, we will use reasonable efforts to investigate and correct any such non-conformance promptly. You will use reasonable efforts to mitigate any damage you may incur as a result of such non-conformance. Subject to your right to terminate this Agreement for cause, this section 7.3 constitutes your sole and exclusive remedy for breach of the warranties in section 7.2.

7.4. DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS" BASIS, AND WE DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THOSE (I) OF MERCHANTABILITY OR SATISFACTORY QUALITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT AND (IV) ARISING FROM CUSTOM, TRADE USAGE, COURSE OF PRIOR DEALING OR COURSE OF PERFORMANCE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE DO NOT WARRANT THAT YOUR USE OF THE SERVICES OR DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES, DELIVERABLES AND/OR THE INFORMATION

OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR REQUIREMENTS OR PRODUCE PARTICULAR OUTCOMES OR RESULTS. WE ARE NOT RESPONSIBLE FOR ANY ISSUES WITH THE SERVICES THAT ARISE FROM YOUR DATA OR THIRD PARTIES. YOU ACKNOWLEDGE THAT WE DO NOT PROVIDE ANY ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO YOU OR ANY THIRD PARTY.

## **8. INDEMNIFICATION**

8.1. Our Indemnification. Subject to section 8.3, we will indemnify and hold you and your Affiliates, officers, directors, employees, and agents harmless from and against any and all costs, damages, losses, liabilities and expenses, including attorneys' fees and costs (collectively, "Damages") to the extent arising out of a claim alleging that the Services or Deliverables infringe or misappropriate the Intellectual Property Rights of a third party, except to the extent that the alleged infringement is based on: (a) a modification of the Services or Deliverables by anyone other than us; (b) use of the Services or Deliverables in combination with any software, hardware, network or system not supplied by us if the alleged infringement relates to such combination; or (c) use of the Services or Deliverables in a manner contrary to our written instructions. If the Services or Deliverables infringe, or we reasonably believe they may infringe, Intellectual Property Rights, we may, at our own expense and option: (i) procure the right for you to continue use of such Services or Deliverables; (ii) modify such Services or Deliverables so that they become non-infringing without material loss of functionality; or (iii) if (i) or (ii) are not feasible, terminate the Agreement and refund you a pro-rata portion of any prepaid fees for the Services or Deliverables covering the period when you were unable to use the Services or Deliverables due to the infringement claim. THE INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE REPRESENT OUR SOLE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY THIRD-PARTY CLAIM DESCRIBED IN THIS SECTION.

8.2. Indemnification by You. Subject to section 8.3, you will indemnify and hold us and our Affiliates, officers, directors, employees, and agents harmless from and against any and all Damages to the extent arising out of a third-party claim alleging that your use of the Services or Deliverables in breach of this Agreement infringes the rights of, or has caused harm to, a third party.

8.3. Indemnification Procedure. In the event of a potential indemnity obligation under this section 8, the party claiming the indemnity shall provide to the other party: (i) prompt written notice of the claim such that the other party's ability to defend the claim is not prejudiced; (ii) sole control of the defence and settlement



of the claim; and (iii) all reasonable assistance, at the other party's expense. Without the prior written consent of the party claiming the indemnity, the other party shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of, or imposes additional obligations on, the party claiming the indemnity.

## **9. LIMITATION OF LIABILITY**

9.1. General Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. EXCEPT FOR YOUR OBLIGATIONS TO PAY FEES UNDER THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE VALUE OF THE FEES ACTUALLY PAID BY YOU TO US IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9.2. Unlimited Liability. Nothing in this Agreement shall be construed so as to limit or exclude any liability which cannot be legally limited, including but not limited to liability for: (i) death or personal injury caused by a party's negligence; or (ii) fraud or fraudulent misrepresentation of a party.

9.3. Scope. The exclusions and limitations above apply to all causes of action, whether arising from breach of contract, tort, breach of statutory duty or otherwise, even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss, provided that nothing in this Agreement shall limit or exclude any liability which cannot be excluded or limited as a matter of law. A party may not circumvent the limitations of liability herein or receive multiple recovery under this Agreement by bringing separate claims on behalf of its Affiliates.

## **10. GENERAL PROVISIONS**

10.1. Compliance with Laws. Each party shall comply with all applicable laws, statutes, codes and regulations in relation to the Services, including applicable anti-bribery and anti-corruption laws, Data Protection Laws and tax evasion laws. Technical data you receive as a part of the Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied persons list and that it is not owned or controlled by a politically exposed person. You shall not access or use

the Services in violation of any U.S. export law or regulation or in any Restricted Territories. "Restricted Territories" means (i) Cuba, Iran, North Korea, Syria and the territory of Crimea / Sevastopol, and (ii) any other country or territory that is subject to sanctions by the United Kingdom, the European Union, or the U.S. Each party will promptly report to the other party if it has violated, or if a third party has a reasonable basis for alleging that it has violated, this section. A breach of this section is a material breach of this Agreement.

10.2. Assignment. Neither party may assign any rights or obligations under this Agreement without the other party's prior written consent, provided that a party may assign the Agreement in its entirety (i) in connection with a merger, acquisition, corporate reorganisation or sale of substantially all of its assets or (ii) to an Affiliate. Any attempted assignment in breach of this Agreement shall be void.

10.3. Remedies Not Exclusive. Except as expressly set forth herein, any remedy in this Agreement is not exclusive of any other available remedy.

10.4. No Third Party Beneficiaries. Except as expressly set out in this Agreement, a person who is not a party to this Agreement will have no rights to enforce it.

10.5. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous written and oral agreements, negotiations and discussions between the parties regarding the subject matter herein. Any Order in effect at the Effective Date shall, from the Effective Date, be subject to the terms of this Agreement. In no event shall any of your terms or conditions (including those in or attached to any purchase order you may send to us) apply to any Order or vary this Agreement. The parties acknowledge that except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

10.6. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, then to the extent possible such provision shall be construed to reflect the intent of the original provision, with all other provisions in this Agreement remaining in full force and effect.

10.7. No Partnership or Agency. Each party is an independent contractor and neither party has any authority to act on behalf of the other. Neither party will represent itself as agent, servant, franchisee, joint venture or legal partner of the other. We are entering into this Agreement as principal and not as agent for any other Sage company, and claims under this Agreement may be brought only against us and not against any of our Affiliates.

10.8. Waiver. A party's failure or delay to exercise or enforce any right under this Agreement will not act as a waiver of such right. Rights may only be waived in writing signed by the waiving party.

10.9. Force Majeure. Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent performance of any obligations under the Agreement is delayed or prevented by a Force Majeure Event.

10.10. Order of Precedence. In the event of any conflict or inconsistency, the order of precedence shall be: (i) your Order; and (ii) these terms (including any addendums, schedules or exhibits hereto).

10.11. Updates. From time to time, we may amend these terms. We will notify you of any material changes by promptly sending an email. By continuing to use Services after we have provided you with such notice, you are indicating that you agree to be bound by the modified terms. Notwithstanding the foregoing, if the changes have a material adverse impact on and are not acceptable to you, then you must notify us within 30 days after receiving notice of the change. If we cannot accommodate your objection, then you may terminate this Agreement pursuant to section 6.2.

10.12. Governing Law and Jurisdiction. 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 law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

10.13. Notices. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission.

10.14. Interpretation. Headings are for convenience only and may not be used in interpretation. The word "including" is not a word of limitation. The Agreement shall not be interpreted against the drafter.