

E-Learning Terms and Conditions

August 2019

Your Subscription to E-Learning 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 E-Learning. 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 E-Learning. If you don't accept this Agreement, you should contact us immediately and not access or use the E-Learning in any way. Please note, unless otherwise specified by us in writing, you cannot use the E-Learning 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 E-Learning and any orders processed are subject to satisfactory credit status. By using the E-Learning you indicate acceptance of this Agreement together with any specific terms which may be mentioned in any electronic messages, on the Website, or communicated to you in any other way.

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 E-Learning.

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:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control of the subject entity, where “**control**” is the ownership or control (whether directly or indirectly) of at least 50% 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.

“**Customer Data**” means the data, information or material provided, inputted, processed or submitted by you (or by Users on your behalf) into the E-Learning.

“**Data Processing Addendum**” means our Data Processing Addendum set out at Annex 1.

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

“**Effective Date**” means either the date we accept your order in terms of the Order Form, the date you do anything which indicates your acceptance of this Agreement or the date you access and use the E-Learning for the first time, whichever date is earlier.

“**E-Learning**” means any e-learning information and other learning materials displayed on our Website which you have a right to access and use as part of your Subscription, as specified in the Documentation.

“**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 or regulatory authority or by another third party outside the party's control).

“**Initial Subscription Term**” means a period of twelve (12) months.

“**Intellectual Property Rights**” means rights recognised by any jurisdiction with respect to intellectual work product including, without limitation, 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.

“**Privacy Notice**” means our Privacy Notice posted on www.sage.com (or such other URL as notified to you) as amended from time to time.

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“Restricted Territories” means (i) Cuba, Sudan, 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, the U.S, United Nations or elsewhere.

“Subscription” means your subscription to the E-Learning.

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

“Subscription Term” means the term of this Agreement, being the Initial Subscription Term together with any Renewal Terms.

“Users” means those individuals who are authorised by you to access and use the E-Learning. Users may include your employees, consultants, contractors or agents

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

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

“you” and “your” the customer who subscribes to the E-Learning.

1. This Agreement

This Agreement describes how you are allowed to access and use the E-Learning.

2. Who this Agreement is between?

This Agreement is between:

- us, Sage South Africa (Pty) Ltd (company registration number 2003/015693/07), registered office: 6th Floor, Gateway West Offices, 22 Magwa Crescent, Waterfall City, Midrand,
- you, the person or organisation authorised to access and use the E-Learning.

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 shall provide us with valid, up-to-date, and complete billing details and you shall 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 by 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 E-Learning or disable certain functionality and we will be under no obligation to provide you with access to any or all of the E-Learning 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 Bank of South Africa 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 Rands if you subscribe to E-Learning in SA
 - 3.4.2. subject to clause 4.6, non-cancellable and non-refundable; and
 - 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.

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- 3.5. We reserve the right to review the level of Subscription Fees from time to time. If there is a change to any Subscription Fees payable, we will communicate this change to you.
- 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 13.1.1, 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 E-Learning will not infringe the rights of any third party. In the unlikely event of any breach of this clause 4.1 by us, then we will either provide replacement E-Learning to correct the problem or refund you a pro-rata refund of any prepaid Subscription Fees covering the remainder of your current Subscription Term. If we give you a refund, your Subscription will immediately end.
- 4.2. You agree that the E-Learning is informative in nature based on our understanding of the subject matter at the time and is not advisory or intended to be relied upon by you. You should independently verify any information provided in the E-Learning before relying on it.
- 4.3. We do not guarantee (or give any other assurances whatsoever) that:
 - 4.3.1. the E-Learning will meet your individual needs;
 - 4.3.2. there will be no interruptions in your use of the E-Learning;
 - 4.3.3. you will get particular results from the E-Learning; and
 - 4.3.4. the standard of the results you will get from using the E-Learning.
- 4.4. Except where clause 4.3 applies, this clause 4 describes all of our commitments relating to the E-Learning. Unless this Agreement states otherwise, we are not bound by any other contract terms, warranties or any other type of promise relating to the E-Learning. If, by law, a particular term, warranty or other promise relating to the E-Learning 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;
 - 4.5.1.2. loss of profit and/or anticipated profit;
 - 4.5.1.3. loss of revenue, contract and/or business;
 - 4.5.1.4. loss of savings and/or anticipated savings;
 - 4.5.1.5. business interruption;
 - 4.5.1.6. depletion of goodwill and/or similar losses;
 - 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 the value of the Subscription Fees actually paid by you to us in the previous 12 months.
- 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. Your obligations

- 5.1. You shall:
 - 5.1.1. provide us with all necessary co-operation in relation to this Agreement;
 - 5.1.2. carry out all of your obligations under this Agreement in a timely and efficient manner;
 - 5.1.3. ensure that the Users use the E-Learning only in accordance with the Documentation and the terms of this Agreement, and be responsible for any User's breach of this Agreement;
 - 5.1.4. obtain and maintain all necessary licenses, consents and permissions necessary to allow us (or our employees, consultants, subcontractors or agents) to perform our respective obligations under this Agreement;
 - 5.1.5. ensure that your network and systems comply with any requirements as notified to you from time to time;
 - 5.1.6. comply with all notices, policies and instructions relating to the E-Learning which we provide to you, from time to time; and

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- 5.1.7. be solely responsible for the accuracy, quality, reliability, integrity and legality of the Customer Data and for obtaining the necessary consents and permissions to allow you to input the Customer Data into the E-Learning.

6. Intellectual Property Rights and Ownership

- 6.1. All Intellectual Property Rights in the E-Learning shall belong to us or our licensors absolutely. We hereby grant you a non-exclusive, non-transferable, limited licence to use the E-Learning as set out in clause 7. Such licence shall be for your Subscription Term only.

7. Your rights to use the E-Learning

- 7.1. By accepting this Agreement, we give you the right to use the E-Learning in the way described in this Agreement.
- 7.2. Your right to use the E-Learning is not exclusive, which means that we may grant the same and similar rights to others. The E-Learning may only be used by the person or organisation who has purchased the Subscription.
- 7.3. You can only access the E-Learning during your Subscription Term. After this time, you will not be able to use the E-Learning or access the E-Learning without buying another Subscription from us.
- 7.4. You are solely responsible for procuring, maintaining and securing your network connections and telecommunications links from your systems to the E-Learning, and for all problems, conditions, delays, delivery failures, costs and all other loss or damage arising from or relating to your network connections, telecommunications links or caused by the internet.
- 7.5. You shall indemnify us, and hold us and our officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with a claim alleging that your use of the E-Learning in breach of this Agreement infringes the rights of, or has caused harm to, a third party.

8. Restrictions on using the E-Learning

- 8.1. The E-Learning 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 licence agreement provided with that Third-Party Material. If there is no licence agreement with that Third-Party Material, this Agreement will apply to how you use that Third-Party Material. Sage does not endorse, and does not make any representation, warranty or promise regarding such Third-Party Material and shall have no liability whatsoever for any damage, liabilities or losses caused by any Third-Party Material.
- 8.2. You shall not:
- 8.2.1. use the E-Learning in any way other than as set out in this Agreement;
 - 8.2.2. allow anyone else to access or use the E-Learning 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 E-Learning in any way;
 - 8.2.3. use the E-Learning to help you develop your own training course or learning materials;
 - 8.2.4. transfer any part of the E-Learning to any other person or organisation. For example, you cannot sell the E-Learning. If you become insolvent, an insolvency practitioner may not pass on the E-Learning or your Subscription as part of your assets;
 - 8.2.5. attempt to de-compile, reverse compile, disassemble, reverse engineer, copy, modify or make derivative works based upon the E-Learning;
 - 8.2.6. remove any proprietary notices or labels from the Documentation or the E-Learning;
 - 8.2.7. use the E-Learning for any purpose other than those for which it was designed and specifically not use it:
 - 8.2.7.1. to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws or regulations;
 - 8.2.7.2. to provide us with fraudulent information;
 - 8.2.7.3. to send or store material which violates the rights of a third party;
 - 8.2.7.4. to send or store material containing viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs;
 - 8.2.7.5. to interfere with or disrupt the integrity or performance of the E-Learning or other data contained therein or threaten to do the same;
 - 8.2.7.6. to make or attempt to make a local non-cache copy or any part of the E-Learning; or
 - 8.2.7.7. for any other illegal or unlawful purposes.
- 8.3. If we believe that the way you use the E-Learning may breach any part of this Agreement, we reserve the right to terminate your Subscription in accordance with clause 13.

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9. Right of Audit

- 9.1. Without prejudice to any other rights or remedies which we may have, if we reasonably suspect that you have breached clauses 7 or 8 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 7 or 8 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 13.1.2. Any outstanding Subscription Fees in relation to your Subscription will immediately become due.

10. E-Learning Material and our Website

- 10.1. From time to time we may change or add to the E-Learning.
- 10.2. We will try to make sure that our Website or the E-Learning are free from viruses, however, we cannot guarantee this. We recommend that you use your own virus-protection software.
- 10.3. 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.

11. Data Privacy

- 11.1. To the extent that we process any Customer Data, including your personal data (as defined in the Data Processing Addendum), we will do so pursuant to the Data Processing Addendum.

12. Commencement and Term

- 12.1. Your Subscription shall commence on the Effective Date and shall continue for the Initial Subscription Term and thereafter, your Subscription shall be automatically renewed for successive periods of one (1) month (each a “**Renewal Term**”), unless and until:
 - 12.1.1. we notify you of termination, in writing, at any time in which case your Subscription shall terminate at the end of the calendar month following the month in which we notify you;
 - 12.1.2. you write to us and instruct us that you wish to terminate your Subscription, after which your Subscription will terminate at the end of the calendar month following the month in which you called us; or
 - 12.1.3. your Subscription is otherwise terminated in accordance with the terms of this Agreement.
- 12.2. In the event that you fail to give us notice of non-renewal pursuant to clause 12.1.2 then you shall remain liable for the Subscription Fees for the remainder of the following Renewal Term.

13. Termination

- 13.1. We may terminate your Subscription and this Agreement in writing with immediate effect if you:
 - 13.1.1. fail to pay any Subscription Fees by the due date;
 - 13.1.2. are in material breach of any terms of this Agreement;
 - 13.1.3. violate any part of clause 8. Any outstanding Subscription Fees in relation to your Subscription will become immediately due and payable by you;
 - 13.1.4. 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
 - 13.1.5. sell all of your assets or are merged or re-organised in circumstances where you are not the surviving entity.
- 13.2. Termination by us in accordance with our rights under clause 13.1 is without prejudice to any other of our rights or remedies accrued prior to termination.
- 13.3. On termination pursuant to clause 13.1 all rights granted to you under this Agreement and the licence granted pursuant to clause 5 shall immediately cease.
- 13.4. 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.

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- 13.5. On termination of this Agreement for any reason:
- 13.5.1 you will cease using the E-Learning; and
 - 13.5.2 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.
- 13.6. No matter how this Agreement ends, your Customer Data remains your data and you are entitled to extract it from the E-Learning 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.

14. Confidentiality

- 14.1. Subject to clause 14.2 "**Confidential Information**" means all information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms of this Agreement, business and marketing plans, pricing and payment information, technology and technical information, product designs, and business processes.
- 14.2. Confidential Information excludes: (i) information that was known to the Receiving Party without a confidentiality restriction prior to its disclosure by the Disclosing Party; (ii) information that was or becomes publicly known through no wrongful act of the Receiving Party; (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 Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information; and (v) information that was authorised for release (in writing) by the Disclosing Party.
- 14.3. The Receiving Party will use the same degree of care as it uses for its own confidential information of like nature, but no less than commercially reasonable care, to protect the Disclosing Party's Confidential Information from any use or disclosure not permitted by this Agreement or authorised by the Disclosing Party. The Receiving Party may disclose the Disclosing Party's Confidential Information to its employees, Affiliates and service providers who need access to such Confidential Information in order to affect the intent of this Agreement, provided that they are bound by confidentiality obligations no less restrictive than those in the Agreement
- 14.4. The Receiving Party may disclose Confidential Information to the extent required by court or administrative order or law, provided that the Receiving Party provides advance notice thereof (to the extent practicable) and reasonable assistance, at the Disclosing Party's cost, to enable the Disclosing Party to seek a protective order or otherwise prevent or limit such disclosure.

15. Sanctions

- 15.1. You hereby confirm that: (i) you shall, at all times during the Subscription Term, conduct your business in compliance with all sanctions laws, regulations and regimes imposed by relevant authorities including but not limited to the Office of Foreign Assets Control (OFAC), the UN, the UK and EU; (ii) neither you nor any of your Affiliates is named on any "denied persons list" (or equivalent targeted sanctions list) in violation of any such sanctions restrictions, laws, regulations or regimes, nor are you or any of your Affiliates owned or controlled by a politically exposed person; and (iii) you have and shall maintain throughout the Subscription Term appropriate procedures and controls to ensure and be able to demonstrate your compliance with this clause 15.1. You shall not permit Users to access and/or use the E-Learning in violation of any export restrictions in any jurisdiction or any sanctions law or regulation or in any Restricted Territories. Such access and/or use is not permitted by us and shall constitute a material breach of this Agreement, and where we are aware of or suspect you (or any of your Users) to be accessing, using, permitting or otherwise facilitating such access and/or use in any Restricted Territory in breach of such laws or regulations, we may immediately suspend your use of the E-Learning to the extent that we consider necessary without prior notice, and we shall promptly notify you of such suspension and investigate any potential breach. You will promptly notify us if either you or any of your Affiliates has violated, or if a third party has a reasonable basis for alleging that you or any of your Affiliates has violated, this clause 15.1. In the event that we have grounds to suspect that you are accessing and/or using the E-Learning in violation of this clause 15.1, you shall provide us with your full cooperation and assistance in respect of your access and/or use of the E-Learning and in respect of your compliance with this clause 15.1. You shall indemnify (and keep indemnified) us and our officers, directors, employees, attorneys and agents against any claims, costs, damages, losses, liabilities and expenses (including attorney's fees and costs) arising out of or in connection with your (or your Users) breach of this clause 15.1.

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16. General terms

- 16.1. If we quote you a price, on our website or by phone, for access to and use of the E-Learning, that price will be confirmed in the Documentation.
- 16.2. Notwithstanding any provision contained in the Agreement, neither party will be liable to the other to the extent fulfilment or performance of any terms or provisions of the Agreement are delayed or prevented by a Force Majeure Event.
- 16.3. 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.
- 16.4. This Agreement is the entire agreement between you and us relating to the E-Learning 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.
- 16.5. You must not assign or transfer this Agreement to anyone else. We may assign or transfer this Agreement to another organisation which is part of our group of companies at any time.
- 16.6. 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.
- 16.7. 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.

17. Anti-Bribery and Conflict of Interest

- 17.1 The Parties shall ensure that persons associated with them:
 - 17.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (the "Relevant Requirements");
 - 17.1.2 not engage in any activity, practice or conduct which would constitute an offence any of the Relevant Requirements;
 - 17.1.3 not do, or omit to do, any act that may lead us to be in breach of any of the Relevant Requirements;
 - 17.1.4 promptly report to us any request or demand for any undue financial or other advantage received by you in connection with this Agreement;
 - 17.1.5 have and maintain in place throughout the term of this Agreement, their own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
 - 17.1.6 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.
- 17.2 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 17.
- 17.3 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 17 at the relevant time.
- 17.4 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.
- 17.5 In the event that You become aware of the You or Your Personnel and Associated Companies breaching the obligations under this clause 17, 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.
- 17.6 Breach of this clause 17 shall be deemed a material breach incapable of being remedied under this Agreement.