

## SAGE X3 END-USER LICENCE AGREEMENT

YOUR USE OF THIS SOFTWARE IS SUBJECT TO YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY CHANGE FROM TIME TO TIME, AT THE SOLE DISCRETION OF SBS. YOU WILL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND ITS TERMS AND CONDITIONS BY DOING ONE OR MORE OF THE FOLLOWING OR ALLOWING OR AUTHORISING A THIRD PARTY TO DO IT FOR YOU:

- (1) CLICKING "I ACCEPT" OR A SIMILAR AFFIRMATION THAT APPEARS DURING INSTALLATION OF THE SOFTWARE; OR
- (2) USING THE SOFTWARE.

IF YOU DO NOT AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT, THEN YOU DO NOT HAVE A LICENSE TO USE THE SOFTWARE AND YOU MUST NOT INSTALL, COPY, DOWNLOAD, ACCESS OR OTHERWISE USE THE SOFTWARE.

### TERMS AND CONDITIONS

#### 1. DEFINITIONS

Unless the context otherwise requires, the following terms have the meanings set out in this clause.

1.1 **Agreement** shall mean these terms and conditions and any documentation expressly incorporated in this Agreement by reference, including any amendments or supplementary agreements specifically referencing this Agreement and effected as amendments as provided in this Agreement.

1.2 **Associated Company** shall mean a company, corporation or other entity, 50% or more of whose outstanding securities are owned or controlled, directly or indirectly, by You, or are under Your common control. Such entity shall be deemed to be an Associated Company only so long as it remains under such ownership or control.

1.3 **Documentation** shall mean the manuals for use with the Software and any other necessary installation instructions or any part thereof in printed or electronic format.

1.4 **Licence** means sub-licence between SBS and You.

1.5 **Licensed Materials** shall mean collectively the Software and all Documentation.

1.6 **Location** shall mean the file server(s) where the Software is in Use.

1.7 **Loss** means loss of profit, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, loss of or spoiling of data, and any indirect or consequential loss or damage.

1.8 **SAGE** means any direct or indirect subsidiary of The Sage Group plc or any Sage group company, including but not limited to SBS and Sage SAS.

1.9 **Sage SAS** means a simplified joint stock company incorporated under French law, Registered with the Trade and Companies Registry of Paris under number B 313 966 129, who are authorised to license this Software to You.

1.10 **SBS** means Sage Business Solutions Pty Ltd. (ABN 24 091 525 898) of Level 6, 67 Albert Avenue, Chatswood, NSW 2067, Australia, who are authorised to sub-license this Software to You.

1.11 **Software** shall mean the computer programs licensed to You pursuant to this Agreement, including any upgrades, modifications, enhancements or corrections to it, in machine readable object code form, and/or any part of it and any back-up copies made in accordance with this Agreement.

1.12 **Software Assurance** shall mean our annual maintenance subscription plan for You to keep Your systems reliably running on the latest Sage software without paying full price for upgrades. Each time we release a new version of software, we will automatically send it to You.

1.13 **Use** shall mean transmitting any portion of the Software for processing and/or compiling, executing or interpreting any machine instructions contained in the Software and/or displaying any portion of the Software in connection with processing of such machine instructions. Other technical expressions shall have the meanings commonly attributed to them in the computer and information technology industry.

1.14 **You** or **Your** shall mean the entity or individual that SBS has registered as the sub-licensee for the Software.

## 2. LICENCE

2.1. Unless terminated under clause 15, SBS grants You a non-exclusive, non-transferable, licence to Use the Licensed Materials solely on the following terms:

2.1.1. To Use the Software for the licensed number of users. Subject to SBS's prior written consent which shall not be unreasonably withheld, the right to Use may be temporarily extended to back-up machines during any period when the machines become inoperative due to malfunction, maintenance or hardware modification, provided such back-up machine is under Your control;

2.1.2. In the case of Software operating on a Local Area Network or Wide Area Network, You may Use the Software on file server(s) with more than one associated workstation, provided that a licence fee is paid for each user that has network access to the Software from the file server;

2.1.3. You may make up to two back-up copies of the Software for disaster recovery or security purposes only, provided that all back-up copies bear the same copyright, trade mark notices and other proprietary legends as the original copy.

## 3. PROHIBITED USES

3.1. You must not reproduce or distribute copies of the Licensed Materials to others or electronically transfer the Software other than for Use as permitted by this Agreement, or as agreed in writing by SBS.

3.2. The Licensed Materials contain intellectual property and know-how, system design and proprietary information which is the exclusive and valuable property of SAGE, and You must not disclose to others any such information or materials relating to the design, construction, operation or issue of the Licensed Materials except in connection with the Use permitted by this Agreement, or as agreed in writing by SBS.

3.3. You must not:

3.3.1 decompile, reverse engineer, or otherwise reduce the Software to human readable form, modify, alter, adapt or translate the Software;

3.3.2 hire out, lease, loan, resell, distribute, grant sub-licences, network or create derivative works based on the Licensed Materials or any part of it, nor use the same to act as a bureau or for time-sharing use;

3.3.3 make any copies of the Software except as expressly permitted in this Agreement;

3.3.4 use the Licensed Materials for personal, family, household, or other non-business purposes; or

3.3.5 use the Software in excess of the licenses purchased or acquired by You.

3.4 You acknowledge that the Licensed Materials, related product logos and product names are the trademarks or are otherwise proprietary to SAGE, and You may not remove any such notices or product identification or attempt to cover or disfigure the same.

3.5 If SBS, in its sole discretion, determines that any of the above restrictions or uses have been breached, then SBS reserves the right to take whatever action it deems necessary and without further notice to protect and enforce its rights, including but not limited to prosecution of intellectual property infringements, injunctive relief, compensation in the form of damages or an account of profits, and the payment of legal costs.

#### **4. CONTROL AND AUDIT OF THE SOFTWARE AND EQUIPMENT**

4.1 You must follow all reasonable instructions given by SBS from time to time, in connection with the Use of the Software. You shall permit SBS or its authorised representative at reasonable times, to verify that the Use of the Software and Licensed Materials are in accordance with the terms of this Agreement, and if requested by SBS, You must certify in writing to this effect.

4.2 If the Software is equipped with a function allowing the recording of audit data, You must activate this function at SBS's request and provide SBS with the file containing this information. Such file shall constitute the certification referred to in clause 4.1.

4.3 You shall permit SBS or its authorised representatives to carry out a Location audit.

4.4 If the file or the Location audit reveals any excess Use of greater than 10% of over and above the licensed rights, an additional fee shall be payable by You plus all audit fees incurred. If You use a function or option for which You do not have licensed rights, You must pay the additional fee as per the current price list including the applicable Software Assurance fees. Software Assurance fees will be calculated from the date the usage first occurred. Except as provided in clause 4.5, You agree that SBS nor its authorised representatives shall be liable.

4.5 Any information obtained during the audit shall be treated as confidential information, provided however SBS may disclose any relevant information to the extent required for the recovery of any additional fee payable by You.

4.6 You may transfer ownership, provided that You obtain SBS's prior written consent, which consent will not be unreasonably withheld, the Software to a purchasing party after the close of a sale of either Your entire business, or all, or substantially all, of the assets of Your business, provided the purchasing party reads and accepts (in writing to SBS) the terms and conditions of this Agreement.

4.7 Where You specifically request to store the Software on other equipment for the purpose of back-up and security, and it is desired to have more than one copy of the binaries of the system, and if the back-up is at a different address to the Location, You must advise SBS in writing prior to installing the back-up system. The total number of users must not exceed the Licensed number. The additional licensed system must not be used for processing other than for back-up purposes under any circumstances.

## **5. INTER-GROUP TRANSFERS**

5.1 In certain circumstances which must be agreed in advance and in writing by SBS and on payment of SBS's then prevailing fee, You may be entitled to assign Your rights and obligations under this Agreement to any other Associated Company of Yours, or if You are disposing of as part of a going concern to another company. For the avoidance of doubt, You shall not be entitled to assign or otherwise dispose of its rights and obligations under this Agreement if You have a petition presented or pass a resolution for winding up or have a receiver or administrator appointed over Your assets or make an arrangement with Your creditors to go into liquidation or, if You being an individual, commits any act of bankruptcy with Your creditors.

## **6. INTELLECTUAL PROPERTY RIGHTS**

The copyright and all other intellectual property rights of whatever nature in the Licensed Materials and any modifications or changes of it and all patents, trademarks and copyrights relating to it are and shall always remain the property of SAGE, and any rights in any other work prepared or carried out by SAGE shall vest in SAGE on creation of it. You shall notify SBS immediately if You become aware of any unauthorised Use of the Licensed Materials in whole or in part by any third party.

## **7. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

7.1 If any Licensed Materials are held or alleged to infringe any intellectual property rights, SBS shall have the option, at its own expense, to (i) obtain for You the right under the relevant intellectual property right to continue using the affected Licensed Materials; (ii) replace the relevant part of the Licensed Materials with a non-infringing replacement; (iii) modify the relevant part of the Licensed Materials to make it non-infringing; or (iv) refund the depreciated value of the relevant part of the Licensed Materials, and accept return of the same. SBS shall, however, at all times use reasonable endeavours to ensure that You are left with operational and functionally equivalent Licensed Materials.

7.2 SBS shall not be liable for any loss, costs or damages if a claim of infringement of intellectual property rights arises out of; (i) compliance with Your requests; (ii) incorporation of Your or a third party's product or products in or with any Licensed Materials; (iii) modification of any Licensed Materials after delivery by SBS; (iv) Your Use of other than the latest supported releases of any Licensed Materials (if such release has been made available to You); (v) Your Use of any Licensed Materials after receiving notice that the relevant Licensed Materials infringe any intellectual property rights; or (vi) any other fault, action or inaction by You. In this regard, you agree to indemnify and hold SBS (which shall include SAGE, any of its employees, agents, contractors, and officers harmless from any claim or demand (including legal and other professional costs) made by a third party owing to or arising out of Your breach of this Agreement or Your infringement of any applicable laws or rights of a third party.

7.3 You must immediately inform SBS of any claim or action brought against You on the issue of infringement of any copyright and other intellectual property rights in the Licensed Materials.

7.4 The preceding clauses 7.1 to 7.4 (inclusive) states the entire liability of SAGE to You in respect of infringement or alleged infringement by the Licensed Materials of the intellectual property rights of any third party.

## **8. CONFIDENTIALITY**

8.1 You acknowledge that the Licensed Materials contain intellectual property rights and know-how, system design and proprietary information which is the exclusive and valuable property of SAGE. Subject to clauses 8.2 and 8.3, You undertake to treat as confidential all information contained or embodied in the Licensed Materials and in any specifications of it made available to You and shall not, except as provided in clauses 8.2 and 8.3, disclose the same in the whole or in part to any third party without the prior written consent of SBS.

8.2 You shall be permitted to disclose aspects of the Licensed Materials to Your personnel only to the extent necessary and to those personnel having a legitimate need to know. You are responsible for ensuring that such personnel are made aware, prior to such disclosure, that the Licensed Materials are the confidential material of SAGE, and that such personnel owe a duty of confidence to SAGE.

8.3 The provisions of clause 8.1 shall not apply to:

- (i) information in the public domain otherwise than by breach of this Agreement; and/or
- (ii) information already in the possession of the receiving party prior to disclosure with right to use; and/or
- (iii) information received from a bona fide third party without breach of obligation to other party to it.

8.4 You must effect and maintain reasonable security measures to safeguard the Licensed Materials from theft, or access by any person other than as expressly permitted in this Agreement.

8.5 The obligations contained in this clause 8, as to confidentiality, shall not merge and survive any termination under this Agreement, howsoever caused.

## **9. UPGRADE SYSTEM OVERLAP**

9.1 Where You have acquired an upgrade from one licensed product to another then, save for a permitted period of dual processing, Your license for the product being replaced shall terminate on the first Use of the upgrade. The maximum period allowed for such dual processing is three (3) months from the date in the month in which the upgrade was acquired.

9.2 SBS reserves the right to require You to remove unlicensed versions of the Licensed Materials, at any time after the end of the dual processing period.

## **10. FEES AND PAYMENTS**

10.1 Software Assurance is mandatory with the initial license purchase. The terms and conditions are set out in the Software Assurance terms and conditions of Sale.

11.2 No right to Use the Licensed Materials shall be granted until SBS has received full payment for the Licensed Materials when due.

## **11. WARRANTY**

11.1 SBS warrants that it has the right to grant the sub-licences to Use the Software as set out in this Agreement.

11.2 You acknowledge that the Software consists of standard modules which have not been prepared to meet Your particular requirements and it is therefore Your responsibility to ensure that the Software meets Your requirements. You further acknowledge that You are not relying on any statements or representations regarding the Licensed Materials that are not expressly provided in this Agreement.

11.3 Subject to clause 12.1, SBS cannot always foresee or anticipate technical or other difficulties. These difficulties may result in loss of data or other software or service interruptions. For this reason, **YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE SOFTWARE IS AT YOUR OWN RISK. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SBS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SBS MAKES NO WARRANTY THAT :**

- (I) THE SOFTWARE WILL MEET YOUR REQUIREMENT;**
- (II) THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE;**
- (III) THE QUALITY OF THE SOFTWARE, SERVICE, INFORMATION OR OTHER MATERIAL OBTAINED BY YOU OR ANY USER IN CONNECTION WITH THE USE OF THE SOFTWARE WILL MEET YOUR EXPECTATION.**

The above disclaimer is made subject to Your rights under the *Competition and Consumer Act 2010* (Cth).

## **12. LIMITATION OF LIABILITY**

12.1 To the maximum extent permitted by law, in cases of any losses (as defined) not otherwise excluded by a term of this Agreement, SAGE or SBS's total liability (whether in contract, tort, including negligence or otherwise) under or in connection with this Agreement, or based on any claim for indemnity or contribution will not exceed the total cost of the software paid by You to SBS.

## **13. RELEASE OF SOFTWARE**

13.1 You acknowledge and accept that the Licensed Materials will not be released until SBS has received all completed order forms and signed agreements.

13.2 If You change Your trading name such change must be communicated, in writing, by You to SBS, and accompanied by a copy of the Change of Name Certificate.

13.3 An administrative charge may be levied by SBS for changing Your trading name in accordance with clause 13.2.

## **14. FORCE MAJEURE**

14.1 SBS shall not be liable to You for delays and failures in performance resulting from causes beyond our reasonable control, including but not limited to, acts of god, labour disputes, disturbances, material shortages, or rationing, riots, acts of war, government regulations, communication or utility failures, computer disruptions due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.

## **15. TERMINATION**

15.1 This Agreement shall terminate automatically if You fail to comply with any of the provisions of this Agreement and do not rectify such non-compliance within fifteen (15) days of SBS's written notice to it. This Agreement shall also terminate automatically if You have a petition presented or pass a resolution for winding up or shall have a receiver or administrator appointed over Your assets or make an arrangement with Your creditors to go into liquidation, or if You being an individual commits any act of bankruptcy or compounds with Your creditors, then SBS may, without prejudice to any other rights or remedies, and without being liable to You for any loss or damage which may result, give written notice to You terminating this Agreement with immediate effect.

15.2 Upon termination for any cause whatsoever, You shall lose all rights to Use the Licensed Materials and shall forthwith destroy the same and all copies made in whole or in part for any purpose, and shall complete a purge certificate, which shall be provided to You by SBS, and return it to SBS confirming that all such copies have been destroyed.

## **16. GENERAL**

16.1 Subject to clause 5, You may not assign, transfer or otherwise dispose of Your rights and obligations under this Agreement without the prior written consent of SBS. SBS may assign this Agreement without Your consent.

16.2 This Agreement sets out the entire agreement and understanding between the parties relating to the subject matter contained in this Agreement and supersedes all previous communications, representations, proposals or prior agreements between them.

16.4 All notices required to be given under this Agreement by one party to the other shall be sufficiently given if in writing and delivered or sent by hand or pre-paid letter, or facsimile transmission confirmed by post, to the registered address of the other party, or such other address as the parties may notify from time to time. Notices shall be deemed to have been received on delivery if delivered by hand, or on the third day after posting if sent by pre-paid letter or, if given by facsimile transmission, upon transmission.

16.5 The headings of the clauses of this Agreement are provided for convenience only and shall not contribute to or affect the meaning or construction of the said clauses.

16.6 This Agreement may only be amended by written agreement between SBS and You.

16.7 If any term, part or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable as being contrary to applicable law or public policy, such provision shall to the extent reasonably possible be construed in a manner so as to be enforceable and the remaining provisions thereof shall remain in full force and effect and in no way be affected, impaired or invalidated, except by reason thereof the fundamental nature of this Agreement is thereby frustrated.

16.8 The construction, validity and performance of this Agreement shall be governed by the laws of New South Wales, and each party hereto submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

V 27-07-2015