

Sage One payroll software licence agreement

Memorandum of agreement entered into between

Sage VIP

A Division of Sage South Africa (Pty) Limited
Registration number: 2003/015693/07)

A company duly incorporated under the laws of South Africa having its main place of business at:
Sage VIP building, Corner of Aramist Avenue and Southern Cross Street, Menlyn Maine, Waterkloof Glen Ext 2,
Pretoria; Postal: PO Box 38017, Garsfontein East, 0060;
(012) 420 7000 (Tel), (012) 420 7339 (Fax).
(herein after referred to as "Sage VIP")

And

The Client of the Sage One Payroll software;
(herein after referred to "Licensee").

Recital

Whereas Sage VIP is the owner of the Software and the Licensee wishes to obtain the right to use the Software for specific purposes; and

Whereas the Licensee has accepted the fees detailed in the Schedule of Fees and Rates and agrees to the terms and conditions below;

Now therefore Sage VIP agrees to licence such Software to the Licensee on the following terms and conditions:

Definitions

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning:

- 1.1 Agreement shall mean this document together with and including the Schedule of Fees and Rates and all other written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.2 Client shall mean the person or entity defined by the information on the Account Information page of the Sage One Payroll application (or software);
- 1.3 Commencement date shall mean the date of acceptance of this Agreement by the Licensee;
- 1.4 Confidential information shall mean:
 - 1.4.1 any information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspections or analysis, including, without limitation, scientific business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas;

- 1.4.2 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 1.4.3 any dispute between the parties resulting from this agreement;
- 1.5 Copyright shall mean all rights of Copyright whether existing now or in the future in and to the Software and Software Documentation;
- 1.6 Hosting site shall mean the website (www.payroll.sage.co.za)
- 1.7 Intellectual Property Rights shall mean all present and future rights in the Software and Software Documentation and other rights, which may in the future be based thereon, including but not limited to Copyright;
- 1.8 Licence shall mean a limited, non-transferable and non-exclusive right granted to the Licensee to use the Software and Software Documentation in terms of this Agreement.
- 1.9 Notice shall mean a written document;
- 1.10 Parties shall mean both Sage VIP and the Licensee;
- 1.11 Registered user shall mean the person that has been granted a unique login and password to access the Software. There may be multiple registered users per Client;
- 1.12 Schedule of Fees and Rates shall mean the information detailing Sage VIP's prevailing licence fees and rates for use of the Software as well as possible support services. This information is available on the pricing page of the Hosting site;
- 1.13 Software shall mean the Sage One Payroll software provided by Sage VIP to the Licensee on the hosting website (www.payroll.sage.co.za) for the duration of this Agreement; and
- 1.14 Software documentation shall mean any manuals containing instructions pertaining to the use of the Software and setting out the operation of the Software;

Grant and nature of licence

- 2.1 Sage VIP herewith grants a Licence to the Licensee to operate the Software for its intended function for the benefit of the Licensee and to use the Software Documentation for the duration of this Agreement;
- 2.2 The Licensee shall not have the right to sub-license the software to any third party for compensation;
- 2.3 The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the Software, or attempt to do any of these;
- 2.4 The Licensee shall allow Sage VIP, upon reasonable notice, access to its premises to conduct a reasonable audit of the Licensee's compliance with the Agreement;

Commencement and duration

- 3.1 This Agreement shall commence on the Commencement date. Thereafter the agreement will automatically renew for one further processing period whenever the Registered user proceeds to the next payroll processing period.

Termination

- 4.1 Either of the parties can terminate the Agreement at any stage by giving the other party notice of the intention to do so. In the event that Sage VIP gives such notice, termination will only take effect upon expiry of the current tax year during which notice is given, in order to enable the Licensee to complete the current reporting requirements of the tax authorities. The Licensee will be deemed to have terminated the Agreement if no processing occurs for a period of 3 consecutive months.
- 4.2 In the event of termination of this Agreement by either party for whatever reason, the other party reserves the right to exercise any rights or remedies which may have accrued as at date of termination;

Services

- 5.1 Sage VIP shall make the Software available for use to the Licensee on the Hosting site for the duration of this Agreement.
- 5.2 Save for the right to operate the Software for its benefit, Sage VIP shall provide the Licensee with the following services in consideration for the payment of the applicable fees as determined in the Schedule of Rates and Fees for the duration of this Agreement:
- 5.2.1 Email support from the support email address listed on the Hosting site. This support will be provided during normal working hours, defined as Monday to Friday 08h00 to 17h00, excluding South African public holidays. Please expect a 24 hour turnaround time;
 - 5.2.2 Periodic updates to ensure that the Software conforms to new statutory requirements and which Sage VIP will endeavour to make available prior to the date of coming into operation of the legislation in question;
 - 5.2.3 New releases of the Software with system improvements.
- 5.3 Sage VIP could provide the Licensee with consultations, training, payslip stationery and other services as may be agreed upon in writing by the parties from time to time.
- 5.4 Subject to the provisions of 9.1, operation of the Software is at the sole risk of the Licensee and the Licensee shall take all the reasonable and necessary steps usually implemented in a payroll office, or which the Licensee usually implements in its payroll office, to ensure that the operation of the Software complies with the Licensee's requirements.

Data storage

- 6.1 Sage VIP will store all relevant Licensee data and will maintain regular daily backups at offsite storage facilities. Data will be retained for a period of 5 years while the Licensee remains an active user.
- 6.2 In the case of a termination of the Agreement, whether agreed or deemed, the Licensee data will be stored for a further period of 6 months at no charge. The Licensee may elect to have the data stored by Sage VIP for a monthly fee or request for a backup to be made available to the Licensee for a once off fee. Rates are stipulated in the Schedule of Rates and Fees.
- 6.3 There is currently no limit on the space usage for the Licensee but Sage VIP reserve the right to charge for storage space if the Licensee employee numbers decline.

6.4 Sage VIP is not responsible or liable for the deletion or failure to store data or the loss thereof due to technical failure beyond the control of Sage VIP.

Licence fees and rates

7.1 In consideration of the Licence being granted, the Licensee shall pay Sage VIP the following licence fees:

7.1.1 A fee per use based on the Schedule of Rates and Fees;

7.1.2 Sage VIP will provide an invoice to the Licensee on the last day of each calendar month based on the number of employees per payroll processing period completed during that month;

7.1.3 Invoices are payable by the end of the calendar month following the calendar month in which the invoice was generated;

7.1.4 Sage VIP has the right to deny access to the Software should the Licensee fail to pay the agreed fee within the time period stipulated herein, in which event the Licensee will be unable to access the Software until the outstanding invoices are paid;

7.1.5 Sage VIP has the right to withhold final tax submission reports until all the invoices pertaining to the processing months of the relevant tax year have been paid in full.

7.2 The Licensee shall pay Sage VIP for such further consultations, training and other services as were agreed upon by the Parties at the prevailing rates of the services;

7.3 At the option of Sage VIP, the Fees shall escalate annually, on 1 January, between the following range:

7.3.1 the annual inflation rate as determined by the Consumer Price Index for the preceding calendar year; and

7.3.2 12 % (twelve percent).

7.4 The determination by Sage VIP of the escalation of the Fee shall also consider the number and extent of statutory changes affecting the operation of the Software in any given year.

Sundry obligations of the licensee

8.1 The Licensee shall and, where applicable, at own cost and risk:

8.1.1 acquaint itself with the contents of this Agreement;

8.1.2 acquaint itself with the Software, its compatibility with the Licensee's computer equipment and software, and its capabilities and suitability to achieve the results required by the Licensee;

8.1.3 select only suitably trained staff to operate the Software;

8.1.4 maintain and update machine operating software required for operating the Software; and

8.1.5 abide by all local, national and international laws and regulations;

8.1.6 maintain security and confidentiality of login and password details;

8.1.7 inform Sage VIP thereof if the tax authorities have announced new tax amendments and the Licensee has not received access to amended Software pertaining to such tax amendments.

Limitations of liability

9.1 Sage VIP makes no representation and gives no warranties, whether expressed or implied, as to the suitability and operability of the Software for the Licensee's needs, its quality or functionality or its fitness for any purpose whatsoever and Sage VIP does represent or warrant that the operation of the Software will be uninterrupted or without error.

9.2 Sage VIP warrants that for the duration of this Agreement;

9.2.1 the Software will be capable of being used for its intended purpose;

9.2.2 that all documentation, training and additional services provided shall be reasonably accurate, effectively conducted in a professional manner and provide adequate support for the use of the Software.

9.3 In the event that the Software and/or such additional documentation and services referred to in 9.2 fail to meet the warranted standards, then Sage VIP shall at its own expense and election, depending on the circumstances:

9.3.1 repair the Software to ensure that it is capable of being used as intended;

9.3.2 upgrade or improve such additional services or documentation so that it is capable of being used as intended; or

9.3.3 replace the Software with similar Software, which complies in all aspects with the intended purpose of the Software;

9.4 The warranties set out in 9.2 and 9.3 shall not apply in the event that:

9.4.1 The breach of warranty is a result of a force majeure event as set out in 21; or

9.4.2 The Software has been subject to misuse, neglect or unauthorised alteration by the Licensee.

9.5 Subject to 9.6 Sage VIP will in no event be liable to the Licensee for:

9.5.1 any direct or incidental, indirect, special or consequential damages or loss, including but not limited to, interrupted or complete loss of use, revenues, profits, or savings; or

9.5.2 loss or damage to the Licensee's data or database; or

9.5.3 claims, demands or actions against the Licensee by any third parties, or payments due or made by the Licensee to third parties; or

9.5.4 loss of funds contained in, dispensed by or associated with the Software; or

9.5.5 any faulty installation or implementation, delay, failure, breakdown or malfunction of the Software, interruption of service or inability to use the Software; or

9.5.6 any other loss or damage of whatsoever nature which may be sustained by the licensee; arising out of any cause of whatever nature and however arising, including but not limited to the negligence on the part of Sage VIP, its consultants, agents or representatives.

9.6 The liability of Sage VIP for all damages of whatever nature suffered by the Licensee as a direct result of faulty Software shall be limited to the refund of the Licence fees paid for the previous 6 (six) month period. It being recorded and agreed that such liability shall be completely excluded if the Licensee itself attempts to correct or allows third parties to correct or attempt to correct Software or in any manner interfere with the Software without the prior written consent of Sage VIP.

9.7 Sage VIP shall not be liable for any delay, malfunction, faulty implementation, failure breakdown, damage or injury suffered by the Licensee as a result of:

- 9.7.1 the Software or other Software and/or computer programs and/or support services being supplied by or obtained by the Licensee from any source without the prior written consent of Sage VIP; or
- 9.7.2 the Software or other Software and/or computer programs being modified by the Licensee or any third party not authorised to do so in terms of the agreement; or
- 9.7.3 the actions or the requirements of any telecommunications authority or supplier of telecommunications services or software.

In no event will Sage VIP be liable for loss of profits or for incidental special or consequential damages arising out of or in connection with the Software or the delivery, installation, implementation, modification, servicing, execution, performance or use of the Software in combination with any other computer software, or arising out of or in connection with the provision of other support services by Sage VIP to the licensee.

Intellectual property rights

- 10.1 The Licensee acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Software and Software documentation are and will remain the sole property of Sage VIP.
- 10.2 The Licensee shall not question or dispute the ownership of such rights at any time during the continuation in force of the agreement or thereafter.
- 10.3 Sage VIP warrants that the software does not infringe any third party patent, copyright, trademark or any other intellectual property rights.

Sage VIP employees

- 11.1 During the existence of this agreement the Licensee shall not make any offer(s) of employment to Sage VIP employees, nor employ Sage VIP employees, or otherwise acquire the services of Sage VIP employees other than in terms of this Agreement or another agreement concluded between the Licensee and Sage VIP.
- 11.2 For the purposes of 11.1 an employee who resigns from the employ of Sage VIP and immediately thereafter accepts a position of employment, whether temporary or permanent, with the Licensee shall be regarded as a Sage VIP employee.
- 11.3 Should the Licensee obtain the services of a Sage VIP employee in breach of 11.1, the Licensee shall pay to Sage VIP upon demand an amount equal to 20% (Twenty Percent) exclusive of Value Added Tax of the total annual cost to Sage VIP of the employee, including but not limited to the total earnings, Sage VIP contributions and fringe benefits of the employee.

Breach

- 12.1 Should the Licensee breach any stipulation contained in this Agreement, and that breach is not due to force majeure, then;
 - 12.1.1 Sage VIP may terminate this agreement, provided that the Licensee fails to remedy such breach within seven (7) calendar days after receiving a Notice from Sage VIP. Provided

further that Sage VIP confirms this termination, by way of a Notice to the Licensee, and claim all damages that Sage VIP might have suffered as a result of that breach; or

- 12.1.2 Sage VIP may claim specific performance of this agreement from the Licensee and all damages that it might have suffered as a result of that breach;
- 12.2 Should Sage VIP breach any stipulation contained in this agreement, and that breach is not due to force majeure then;
 - 12.2.1 The Licensee may terminate this agreement; provided that Sage VIP fails to remedy such breach within seven (7) calendar days after receiving a Notice from the Licensee. Provided further that the Licensee confirms this termination, by way of Notice to Sage VIP;
 - 12.2.2 Any claim for damages which the Licensee may bring pursuant to breach on the party of Sage VIP shall be subject to the provision of 9.

Interpretation

- 13.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement;
- 13.2 Any reference in this Agreement to the singular includes the plural and vice versa
- 13.3 Any reference to this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa;

Validity

If any provisions of this agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this agreement will not be affected thereby.

Confidentiality and non-disclosure

- 15.1 The parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this agreement.
- 15.2 The parties shall prevent disclosure of the Confidential information, by the use of reasonable means which are at least as stringent as those used to protect the party's own confidential information, except as may be required by law;
- 15.3 It is recorded that the following information will for the purpose of this agreement, not be considered to be confidential information:
 - 15.4.1 information known to either of the parties prior to the date that it was received from the other party; or
 - 15.4.2 information known to the public or generally available to the public prior to the date that it was disclosed by either of the parties to the other; or
 - 15.4.3 information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the parties to the other, through no act or failure to act on the part of the recipient of such information.
 - 15.4.4 information which either of the parties, in writing, authorises the other to disclose.

Relationship

This agreement does not constitute either of the parties an agent or legal representative of the other for any purposes whatsoever and neither of the parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

Dispute resolution

- 17.1 If the parties are unable to resolve any dispute resulting from this agreement by means of joint cooperation or discussion between the individuals directly involved with the execution of this agreement, within one week after a dispute arises or such extended time period as the parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the parties who shall endeavour to resolve this dispute within five (5) calendar days after it having been referred to them.
- 17.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this agreement.

Arbitration

- 18.1 A dispute between the parties relating to any matter arising out of this agreement or the interpretation thereof shall be referred to arbitration, by either of the parties, by way of a notice to the other party, in which Notice particulars of the dispute are set out;
- 18.2 Such arbitration proceeding shall be held in Pretoria and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out;
- 18.2.1 the usual formalities of procedure (e.g there shall not be any formal pleadings or discovery) however, the arbitrator shall be entitled to direct that such formalities may take place in the event that either party will be materially disadvantaged through the disregarding of such rules;
- 18.2.2 the strict rules of evidence:
- 18.3 The Arbitration proceedings shall proceed at the earliest convenience and with a view to being completed within 14 (fourteen) calendar days after being demanded;
- 18.4 The arbitrator for such arbitration proceedings shall be a practicing advocate or attorney, admitted as such in accordance with the legislation of the law governing this agreement, with at least 10 (ten) years' experience, agreed upon by the parties and, failing agreement, nominated by the chairperson for the time being of the Association of Law Societies;
- 18.5 The decision of the Arbitrator shall be final and binding on the parties, who shall summarily carry out that decision and either of the parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 18.6 The "arbitration" clause in this agreement shall be severable from the rest of this agreement and therefore shall remain effective between the parties after this agreement has been terminated.
- 18.7 No clause in this agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

Domicilium

- 19.1 Sage VIP elect as their domicilium citandi et executandi the physical addresses indicated on the front page of this agreement. The Licensee elect as their domicilium citandi et executandi the physical addresses indicated on the Client Information page of the Sage One Payroll application (or software).
- 19.2 Either of the parties may change its domicilium citandi et executandi to another address within the same country by way of a notice to the other party to this agreement, provided that such a notice is received by the addressee, at least seven (7) calendar days prior to such a change taking effect.

Notices

- 20.1 The Parties elect the Domicilium of this Agreement for all notices and other communications to be delivered for the purpose of this Agreement.
- 20.2 Any notice or communication required or permitted to be given in terms of this agreement shall only be valid and effective if it is in writing;
- 20.3 Any notice addressed to either of the parties and contained in a correctly addressed envelope and sent by registered post to it at its chosen address or delivered by hand at its chosen address to a responsible person on any day of the week between 09h00 and 16h00 excluding Saturdays, Sundays and South African public holidays, shall be deemed to have been received, unless the contrary is proved, if sent by registered post on the 14th (fourteenth) calendar day after posting and in the case of hand delivery on the day of delivery.
- 20.4 Any notice sent by telefacsimile to either of the parties at its telefacsimile number shall be deemed unless the contrary is proved, to have been received:
- 20.4.1 If it is transmitted on any day of the week between 09h00 and 16h00 excluding Saturdays and Sundays and South African public holidays within two (2) hours of transmission.
- 20.4.2 If it is transmitted outside of these times within two (2) hours of the commencement of any day of the week between 09h00 and 12h00 excluding Saturdays and Sundays and South African public holidays after it has been transmitted.

Force majeure

- 21.1 Neither of the parties shall be liable for a failure to perform any of its obligations insofar as it proves;
- 20.1.1 That the failure was due to an impediment beyond its control;
- 20.1.2 That it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the conclusion of this agreement; and
- 20.1.3 That it could not reasonably have avoided or overcome the impediment or at least its effects.
- 21.2 An impediment as aforesaid may result from events such as the following, this enumeration not being exhaustive:
- 20.2.1 war, whether declared or not, civil war, civil violence riots and revolutions, acts of sabotage;
- 20.2.2 natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning

20.2.3 explosions, fires, destruction of machines, factories and any kind of installation;

20.2.4 boycotts, strikes and lock-outs of all kinds, go-slows occupation of factories and premises and work stoppages;

20.2.5 acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provision of this agreement.

21.3 For the purposes of this clause, “impediment” does not include lack of authorisations, licences, permits, or approvals necessary for the performance of this agreement and to be issued by the appropriate public authority if applicable.

21.4 Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist, provided that if such impediment continues for a period of more than 60 (sixty) days either of the parties shall be entitled to terminate this agreement.

Entire agreement and variations

22.1 This agreement constitutes the whole agreement between the parties and supersedes all prior verbal or written agreements or understandings or representations by or between the parties regarding the subject matter of this agreement and the parties will not be entitled to rely in any dispute regarding this agreement or any terms, conditions or representations not expressly contained in this agreement.

22.2 No variation of or addition to this agreement will be of any force or effect unless reduced to in writing and signed by or on behalf of the parties.

22.3 Neither party to this agreement has given any warranty or made any representation to the other party other than any warranty or representation, which may be expressly set out in this agreement.

Anti-bribery and corruption

23.1 Licensee acknowledges that integrity, honesty, and compliance with all applicable laws are core business values and practices that Sage VIP adopts.

23.2 Licensee warrants that it has not and will not participate, directly, indirectly, or at all, in any unlawful conduct as between itself and any party that may exert an influence over any end-user that may be construed as bribery and / or corruption as envisaged in the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004, or any other applicable law or legislation.

23.3 Licensee accordingly indemnifies and holds Sage VIP harmless against any such claim of whatsoever nature in terms of which it is alleged that Licensee has acted unlawfully and Licensee agrees to defend any such claim made against Sage VIP on Sage VIP’s behalf and further agrees to pay any legal costs associated therewith.

23.4 Licensee acknowledges that if on reasonable suspicion Sage VIP believes that Licensee is participating in such unlawful conduct, Sage VIP will be obliged in law to report such conduct to a police official.

23.5 Licensee also acknowledges that the Prevention and Combating of Corrupt Activities Act contains extraterritorial provisions and that even if the alleged illegal conduct occurred outside of the Republic of South Africa, a court of the Republic of South Africa will, in certain circumstances, have jurisdiction in respect of such alleged illegal conduct.

23.6 Sage VIP reserves the right to summarily cancel this agreement on written notice if on reasonable suspicion Sage VIP believes that Licensee is participating in such unlawful conduct

Assignment cession and delegation

Neither of the parties shall be entitled to assign, cede, delegate or transfer any rights obligations, share or interest acquired in terms of this agreement in whole or in part to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

Relaxation

No indulgence leniency or extension of a right, which either of the parties may have in terms of this agreement and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor or preclude the grantor from exercising any of the rights that it has derived from this agreement or be construed as a waiver by the grantor of that right.

Waiver

No waiver on the part of either party to this agreement of any rights arising from a breach of any provisions of this agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

Severability

In the event that any of the terms of this Agreement are found to be invalid, unlawful unenforceable such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

Governing law

The validity and interpretation of this Agreement will be governed by the Laws of the Republic of South Africa.

Authorisation warranty

The person accepting this Agreement on behalf of the Licensee warrants that he/she has the authority to do so.