Sage Mid-Market Certified Implementation Partner Program Participant Agreement (USA)

The following terms and conditions, together with a completed signature page constitute a Sage Mid-Market Certified Implementation Partner Program Participant Agreement ("**Agreement**") made between _____ ("**Participant**"), whose address is set forth below, and **Sage Software, Inc.,** a Virginia corporation with offices at 6561 Irvine Center Drive, Irvine, CA 92618, USA ("**Sage**"), provided that Sage has received a copy hereof signed on behalf of Participant, that Sage has received payment of the applicable program fee, that Sage has certified such receipt and related processing which includes entering, in the spaces provided below the signature block hereof, the date on which the Agreement becomes effective (the "**Effective Date**") and the date on which the Agreement expires (the "**Expiration Date**"). Participant and Sage may each be referred to as a "**Party**" or together as the "**Parties**." The Parties agree that:

Participant is actively working toward or has successfully completed the program requirements to be eligible to participate in the Sage Mid-Market Certified Implementation Partner. Program benefits and requirements are subject to change at the sole discretion of and are listed in the Sage Mid-Market Certified Implementation Partner Program Overview.

Participant may participate in the Program during the Term if Participant complies with the following terms and conditions of this Agreement:

Section A: Program Participation

1.   Requirements for participation.

1.1   Providing Services. Participant will provide consulting and/or implementation services to end users of the Sage Software for which Participant is authorized ("**End Users**"). Each End User has a business partner assigned to his account who is authorized to sell Sage Software licenses and support services to End Users but acts independently from and has no authority to bind Sage. This business partner may request that Participant perform consulting and/or implementation services for an End User. On occasion, an End User may ask Participant to perform consulting and/or implementation services without a referral and independently from a business partner. In this event, Participant agrees to (a) refer the End User back to the assigned business partner or (b) notify the business partner if the End User insists on having Participant perform the consulting and/or implementation services independent of the referring business partner. Such notification will be provided orally or in writing, but it must occur before any consulting and/or implementation services are performed. As used in this Agreement, the term "Software" includes all Sage software (including for the purposes of Sage ERP X3, SAFE), any documentation provided with or as part of such software, and any software upgrades, modifications or updates provided to Participant during the Term.

1.2   Program Fees. Participant understands that any Program fees paid are for the term of this Agreement as specified in **Paragraph 6.** Program fees paid by Participant are not refundable for any reason, unless expressly set forth in this Agreement.

1.3   Certification. Participant must satisfy the certification and ongoing recertification requirements in the Sage Mid-Market Certified Implementation Partner Program Overview document describing its certification policy.

1.4   Record Keeping and Audit. Participant will maintain a file of all End Users to whom Participant has provided consulting or implementation services. The file will be kept for a period of at least two (2) years after the date of rendering of such services and will be made available to Sage upon request. If the Sage inspection discloses an underpayment of Program fees then Participant will immediately remit the amount of the underpayment, together with interest calculated at the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law. If the underpayment exceeds five percent (5%) of the amount due in any reporting period then Participant will also reimburse Sage for the costs of the inspection.

1.5   Notification of Problems. Participant will notify Sage immediately of any problems with any Sage Software or products that either Participant or End Users encounter.

1.6   Compliance with Laws. When providing consulting or implementation services, Participant will comply with all applicable local, state, and federal laws and regulations.

1.7   Use of Logo and Trademarks. Sage retains exclusive ownership of the trademarks represented by its company name, logo, and products. Participant may use the Sage name, logo, and trademarks only in the manner approved in writing by Sage. Any use of Sage trademarks by Participant and any goodwill resulting from such use inures to the benefit of Sage for all purposes.

2. Participant's representations and warranties.

2.1   Conduct. Participant will conduct its business in a manner that reflects favorably upon Sage and Sage products. Participant will at all times maintain the highest professional and ethical practices in providing consulting and/or implementation services to End Users.

2.2   Competency. Participant will use its best efforts to maintain competence in consulting and implementation (as applicable) and use of Sage Software for which Participant is authorized by Sage. Participant will use its best efforts, judgment, and skill to ensure that all Software is properly installed and that the End User receives the highest quality consulting and/or implementation services in the use of Sage Software. In the event, for any reason, Participant is not able to provide the highest quality services to an End User, Participant will immediately notify Sage in writing.

2.3   Sage Mid-Market Certified Implementation Partner Program Overview Document. Participant will comply with the terms and conditions in the Sage Mid-Market Certified Implementation Partner Program Overview document as it may be amended from time to time. Participant represents that Participant has read and understands the Sage Mid-Market Certified Implementation Partner Program Overview document.

2.4   Infringement. Participant will not cause an infringement of Sage or a third party's intellectual property rights.

3. Sage disclaimer of warranties.
Any and all information provided or made available by Sage to participant to assist participant's participation in the program is provided "**as is**" with no express or implied warranties of any kind. The excluded warranties include but are not limited to the warranties of merchantability, of fitness for a particular purpose, quality, or productiveness, capacity, and against infringement. Sage does not warrant that the information will meet participant's requirements or that it is error free.

4. Participant's indemnity.
Participant agrees to indemnify and hold harmless Sage, its officers, directors, employees, and agents against and from any and all claims, demands, liability suits, causes of action, lawyer's fees, including lawyer's fees on appeal, arising from or caused by Participant's breach of any provision of this Agreement or arising out or as a result of services Participant provides to an End User, including but not limited to claims for damages based on personal injury (including death) and property damage caused by Participant's negligent or willful conduct, but not including claims covered by the Sage obligation to indemnify Participant as described in **Paragraph 12**.

5. Confidentiality.

5.1   Confidential Information. As used in this Agreement, the term "Confidential Information" means information of Sage or an End User in any form which (1) is proprietary; (2) is marked or designated as confidential; (3) whether or not designated as confidential, is known to Participant as being treated by Sage or an End User as confidential; and (4) information provided to Sage or an End User by third parties which Sage or the End User is obligated to keep confidential. Confidential Information includes, but is not limited to, discoveries, ideas, designs, drawings, specifications, techniques, models, data, Sage Software, codes, documentation, processes, know-how, customer lists, marketing plans, and financial and technical information. Participant acknowledges that all Confidential Information is and will continue to be the exclusive property of Sage, or third parties who have provided it to Sage, or End Users however disclosed or entrusted to Participant.

5.2   Access. Participant acknowledges that it will receive or have access to Confidential Information as part of its business relationship with Sage under this Agreement or with an End User. Participant acknowledges that the ownership of Confidential Information and its confidential status are highly important to Sage and/or the End User and that any unauthorized disclosure of Confidential Information will cause irreparable harm to Sage and/or the End User.

5.3   No Disclosure. Participant agrees not to disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without the express written consent of the party disclosing it, whether Sage or an End User.

5.4   Unauthorized Commercial Use. Participant agrees that Participant will not copy, transmit, reproduce,

summarize, quote, or make any commercial or other use whatsoever of Confidential Information, except as may be necessary to perform or carry out its duties under this Agreement or for an End User.

5.5   Safeguards. Participant will exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure, and agrees generally to take all steps necessary to ensure the maintenance of confidentiality. Participant, if a corporation or business entity, agrees not to disclose Confidential Information within its organization, except to persons specifically authorized by Sage, or in the case of Confidential Information of an End User, except to persons specifically authorized by End User and only after having notified such persons of the confidential nature of such information and having placed them under a written Confidentiality Agreement with covenants of nondisclosure and nonuse as set forth in this Agreement.

5.6   Period of Nondisclosure. Participant agrees that the obligations not to disclose Confidential Information will continue indefinitely, except it will not apply to any information now or hereafter voluntarily disseminated by the owner, to the public, or which otherwise becomes part of the public domain through lawful means.

5.7   Return of Confidential Information. Upon request, Participant will deliver promptly to Sage all Confidential Information, or in the case of Confidential Information of End User, to End User in whatever form that may be in Participant's possession or under Participant's control.

5.8   Notice. If Participant is served with any subpoena or other compulsory judicial or administrative process requiring disclosure or production of Confidential Information, Participant will immediately notify Sage, or in the case of Confidential Information of End User, the End User, in order to allow Sage or the End User to take such action as it deems necessary to protect its interests.

6.   Term and termination.

6.1   The Term. This Agreement, and Participant's right to participate in the Program described herein, will begin on the Effective Date set forth below and end on the Expiration Date set forth below unless this Agreement or the Program (in whole or in part with respect to any individual Software product) is terminated earlier (the "**Term**").

6.2   Termination. Either Party may terminate this Agreement and Participant's participation in the Program with or without cause at any time during the Term by giving the other party thirty (30) days' written notice of termination. Sage may terminate the Program (in whole or in part with respect to any individual Software product) at its sole discretion by giving Participant thirty (30) days' notice of such termination. Within thirty (30) days of the termination or expiration of this Agreement, Participant will return to Sage any materials, equipment, and Confidential Information received from Sage as a result of Participant's participation in the Program.

6.3   Effect of Termination on License. Termination of this Agreement includes termination of the license granted in **Section B.**

6.4   Term Extension. Sage, at its sole discretion, may offer to extend the Term of this Agreement after the Expiration Date, but such extension will be subject to the terms, conditions, and fees then existing for the Program. An extension must be in the form of a new written agreement, or an amendment to this Agreement, and signed by both Parties.

Section b: Sage software license

7.   License grant to Sage Software.

7.1   Sage hereby grants to Participant, and not to any other third party, including any parent, subsidiary, affiliate, employer, or any other third parties claiming through Participant, a nonexclusive, nontransferable limited license to use the Sage Software for which Participant is authorized in object code form only, as described in **subparagraph 7.2** and subject to Participant's strict compliance with the license restrictions set forth in **subparagraph 7.3**.

7.2   Participant will:

7.2.1   Use Sage Software only in Participant's capacity as a Sage Mid-Market Certified Implementation Partner during participation in the Program and then only for the purposes of (a) learning to use Sage Software so that Participant can install, implement, and provide consulting services to Sage End Users on use of Sage Software; (b) demonstrating the options Sage End Users have in using specific software modules and interfaces that can take place; and (c) providing ongoing consulting and/or implementation services to End Users, including, but not limited to creating custom reports, inquiries and fields, modifying

existing reports and inquiries, and providing troubleshooting and testing services on the Software.

7.2.2   Make copies of the Software for back-up purposes only in support of Participant's use of the Software described in **subparagraph 7.2.1** above.

7.2.3   Participant will not decompile the Software from object code to source code or cross-compile or otherwise adapt or modify the Software.

7.2.4   Conform to the Sage stated hardware and operating system requirements as set forth in the user documentation when using the Software.

7.2.5   Notify Sage of any unauthorized use or disclosure of any Sage Software.

7.3   <u>License Restrictions</u>. Participant will **not:**

7.3.1   Use, sublicense, distribute, copy, modify, or transfer the Software unless and except as expressly provided in this License.

7.3.2   Disclose, provide, or otherwise make available to third parties for any purpose any Software in any form, without the prior written consent of Sage, except such transfers or disclosures as are specifically authorized by this Agreement. Participant will use its best efforts, including but not limited to, entering into confidentiality agreements with its employees, to prevent any unauthorized copying, disclosure, or use of any Software by any of its employees or other persons permitted access to the Software. Participant is responsible for any unauthorized copying, disclosure, or use by any such persons.

7.4   <u>No Other Rights</u>. Except as set forth in this **Section B**, neither this Agreement nor Participant's participation in the Program grants or gives rise to any license or assignment of any intellectual property rights in the Software, whether such license is implied, statutory, or arises by operation of law.

8. **Acceptance.** Participant agrees that its acceptance of Software from Sage will be conclusive evidence of Participant's agreement that the Sage Software license governs use of such Software.

9. **Proprietary rights.** Participant agrees that the Software and all information or data regarding the Software supplied by Sage and its suppliers (a) are trade secrets of Sage and its suppliers; (b) are protected by civil and criminal laws, United States Copyright Law, and International Treaty provisions; (c) are very valuable to Sage; and (d) that their use and disclosure must be carefully and continuously controlled. Participant further agrees that underlying ideas, algorithms, concepts, procedures, processes, principles, know-how, and methods of operations are confidential and contain trade secrets. Sage and its suppliers own and retain title to the Software, data, or any other information furnished by Sage to Participant. Participant agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Software.

10. **Protection devices.** Sage may adopt from time to time mechanical or electronic methods that Sage deems necessary to control unauthorized use or distribution of the Software. The Software may only be used with a protection device or with a code that is provided to Participant for that purpose.

11. **Disclaimer of warranties for software.**

11.1   Software is provided "as is" with no express or implied warranties of any kind. The excluded warranties include but are not limited to the warranties of merchantability, of fitness for a particular purpose, quality, or productiveness, capacity, and against infringement. Sage does not warrant that the software will meet participant's requirements or that the operation of the software will be uninterrupted or error free. Sage does not warrant any software that has been altered or changed in any way by anyone other than Sage. Sage is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems that are made after the release of the software or for problems in the interaction or combination of the software with non-Sage Software. Sage does not warrant that any network software or any problems caused in whole or part by network software.

11.2   Sage may, at its sole and exclusive discretion, replace any defective Software or media provided to Participant if Participant returns the Software and all copies made by Participant. If Sage is unable to replace the Software within a reasonable time, Sage will, upon written request by Participant, refund the Program fees paid by Participant for the Term. Upon such event, the license granted to Participant immediately terminates. **These are Participant's sole and exclusive remedies under this Paragraph 11 for any claim arising from or based on warranty.**

12. **Patent and copyright indemnification.** Sage will defend, at its expense, any action brought against Participant

to the extent that it is based on a claim that the Software supplied to Participant, alone and not in combination with any other software, firmware, or hardware, constitutes direct infringement of any patent or copyright filed in the United States on or before the Effective Date of the Term, provided that Sage is promptly informed in writing and furnished a copy of each communication, notice, or other action related to the alleged infringement and is given authority, information, and assistance necessary to defend or settle such claim. Sage will not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with the Participant's or an End User's specification, or any modification of or any additions to the Software after delivery by Sage. In the event any Software furnished hereunder is, in the opinion of Sage, likely to or does become the subject of a claim of infringement of a copyright or a patent, Sage may, at its option and expense, procure for Participant the right to continue using the Software, modify the Software to make it noninfringing or replace it with noninfringing Software, which may, at the option of Sage, come under this same license. If, in the sole opinion of Sage, none of the foregoing alternatives is reasonably available or commercially reasonable to Sage, then Sage, at its option, may refund any fees paid by Participant to Sage to participate in the Program during the Term and terminate the Agreement. The foregoing states the entire liability of Sage with respect to infringement of any copyrights, patents, or other intellectual property rights by the software or any parts thereof and is in lieu of all other warranties or conditions, express or implied.

13. **Termination of the Sage license.** Either Party may terminate this license if any breach of the license remains uncured for more than thirty (30) days after a Party receives notice of its breach. This Sage license also terminates upon the expiration or termination of this Agreement or Participant's participation in the Program. Upon expiration or termination of this license, Participant will either (1) return to Sage the Software and all copies, and all protection devices provided by Sage for use with the Software, or (2) pay Sage an amount equal to the then current list price for the Software and the protection device(s) retained by licensee.

Section C: General terms

14. **General.** The following terms will apply to both **Sections A** and **B** of this Agreement:

14.1 <u>Independent Contractor</u>. Participant is not an agent or representative of Sage for any purpose. Sage assumes no responsibility for the type or quality of services actually rendered to an End User. Sage and Participant are, and at all times will be and remain, independent contractors as to each other, and at no time will either be deemed to be the agent of the other, and no joint venture, partnership, agency, or other relationship will be created or implied hereby. Except as expressly set forth herein, each party will bear full and sole responsibility for its own expenses, liabilities, cost of operation, and the like.

14.2 <u>Subcontracting</u>. In the event that Sage subcontracts with Participant to supply services to an End User on behalf of Sage, such services, as well as payment terms (if any) will be described in a Statement of Work or other agreement. All terms of this Agreement will apply to such Statement of Work or other agreement.

14.3 <u>Choice of Law and Venue</u>. This Agreement will be governed by and interpreted in accordance with the laws of the State of California without regard to conflicts of law principles. In the event of any dispute the parties hereby irrevocably submit to the jurisdiction of any court sitting in Orange County, California, or the United States District Court in Orange County, California, and hereby waive any objection to jurisdiction and venue in any such court, and waive any claim that such forum is an inconvenient forum. The parties further agree that this provision will survive the termination of this Agreement and that no action, regardless of form, arising hereunder, may be instituted by either party more than one (1) year after the cause of action arose, except that the above limitations will not apply to the enforcement of any of the intellectual property rights of Sage. This Agreement will not be governed by the United Nations convention on contracts for the international sales of goods, the application of which is expressly excluded.

14.4 <u>Allocation of risks</u>. Participant agrees that this agreement fairly allocates the risk of the transaction contemplated hereunder between participant and Sage.

14.5 <u>Export</u>. Participant agrees that Sage Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act, or any other export laws, restrictions, or regulations.

14.6 <u>Remedies</u>. Participant agrees that if participant fails to abide by this agreement, Sage will be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this agreement, and to a judgment for damages caused by participant's breach, and to any other remedies provided by applicable law.

14.7 <u>Waivers</u>. A waiver by Sage of any default of any of the terms hereof will not be deemed to be a continuing

waiver or a waiver of any other default or of any other of these terms, but will solely apply to the instance to which the waiver is directed

14.8   Offer. This Agreement will constitute an offer until accepted by Sage in Irvine, California, USA.

14.9   Limitation of remedies and liability. Neither Sage nor anyone else who has been involved in the creation, production, or delivery of the software and services related thereto, or any other software, information, or services delivered by Sage to participant, will be liable to participant or any party claiming through participant for any damages or expenses of any type, including, but not limited to, any lost profits, lost savings, lost business, loss of anticipated benefits, or other incidental or consequential damages, direct or indirect, special or general, arising out of the use or inability to use such software or any information provided to participant, whether arising out of contract, negligence, tort, or under any warranty, otherwise, and whether caused by defect, negligence, breach of warranty, delay in delivery, or otherwise, even if Sage has been advised of the possibility of such damages or for any other claim by any other party. No obligation or liability will arise or flow from the rendering by Sage of technical or other advice in connection with the software, other software, or services, including, but not limited to, installation, training services, and support services. The liability of Sage for damages in no event will exceed the program fees paid to Sage by participant during the term of the agreement in which the claim is brought.

14.10   Integration. Participant and Sage agree that the terms of this Agreement, including the Software license, allocate the risks between Sage and Participant associated with the use of the Software. Participant acknowledges that Participant has read this Agreement, which includes any and all attachments and/or addendums, and the Sage Mid-Market Certified Implementation Partner Program Overview document, understands each and every term and condition, and agrees to be bound by its terms and conditions. Participant agrees that this Agreement is the complete and exclusive statement of the agreement and license between the parties. Participant agrees that any terms or conditions contained in any purchase order, or other request for the Software or any other information, materials or service has been and are rejected by Sage and that this Agreement supersedes all prior and contemporaneous agreements, licenses, proposals, negotiations, or discussions, oral or written, relating to the subject matter herein. No course of dealing or usage of trade or course of performance will be relevant to explain or supplement any terms expressed herein. Participant further agrees that no representations or statements of any kind, including, but not limited to dealer advertising, presentations, oral or written, made by any agent or representative of Sage which are not stated herein will be binding upon Participant or Sage. Participant acknowledges and agrees that the terms of this Agreement, including without limitation any provisions relating to warranties or disclaimers prevail over any licenses contained in any software package and user documentation delivered to Participant pursuant to this Agreement.

Participant represents and warrants that participant has read and understands each and every provision of this agreement and that participant agrees to be bound by the provisions of this agreement and has signed this signature page for the Sage Mid-Market Certified Implementation Partner participant agreement in the space provided below.

By: _____   By: _____
(printed name)   (signature)

Address: _____

Phone: _____   Fax: _____

Fax to Sage : 949-753-0374 or email: PSRIvine@sage.com

For use by Sage only

I, the undersigned Sage employee, hereby certify that I received a copy of this Agreement, signed on behalf of the Participant, and that as of the Effective Date I have entered herein, I am filing and returning a copy hereof.

Effective Date: _____   Filed: ☐   Copy to Participant: ☐

Processed by: _____