

# Software License Agreement

This agreement is for the licence of Dynamics CE PCF control 'Australian Business Register Search' (the "Control")

The licensor requires that a valid licence be purchased by the licensee.

The license will be valid for a period of 1 year from the date of purchase and allows the Licensee to make use of the functionality of the control for the period.

## 1. Parties

1.1 CloudFlow Limited, a company incorporated in England (registration number 11884006) having its registered office at 1st Floor Copthall House, 1 New Road, Stourbridge, West Midlands, United Kingdom, DY8 1PH (the "**Licensor**"); and

1.2 YOUR COMPANY NAME, a company incorporated in Australia (registration number YOUR ABN NUMBER) (the "**Licensee**").

## 2. Term

2.1 This Agreement shall come into force upon payment of licence fee (Effective Date).

2.2 This Agreement shall continue in force for a period of one (1) year when this Agreement shall terminate automatically unless a further licence is obtained.

## 3. Fee.

3.1 The licence fee is \$XXX AUD per year for up to XX users. Additional users may be purchased as required in blocks of 10 on pro-rata basis.

## 4. Upgrades and Enhancements.

4.1 This agreement relates to 'Australian Business Register Search' version 1.0.0.6

4.2 Minor patches and routine upgrades will be provided free of charge to the licensee during the period of the agreement.

4.3 In the occasion that a new major version is available, and the licensee wishes to upgrade, the value of the remaining period of the agreement period will be taken into consideration at a rate of 80% of the remaining months.

## 5. Support and Maintenance.

5.1 Support is provided by contacting [support@cloudflow365.com](mailto:support@cloudflow365.com). The licensor will endeavour to respond within 48 hrs. If the support is reporting a defect, this will be triaged, and a severity applied.

5.2 This agreement covers fixing defects that will be fixed at no charge.

5.2.1 A defect is something that causes the control to malfunction whilst being used acceptably. The licensor will accept a software defect where the defect is wholly within its control and is

caused by a defect in the software provided, with the licensor having the right to determine this at its sole discretion.

5.2.2 The licensee retains the right to take the issue to arbitration if it disagrees with the licensor's decision.

5.2.3 Categorization of accepted defects. These will be categorised by severity.

- Severity 1:
  - Total failure causing material effect on business.
  - Fix provided within 3 business days.
- Severity 2:
  - Partial failure causing a minor effect on business.
  - Fix provided within 10 business days.
- Severity 3:
  - Minor failure causing no effect on business.
  - Fix provided within 20 business days.

5.3 This agreement does not cover costs incurred by the use of the Microsoft Dynamics CE 365 platform or the Australian Business Register API services or any defects relating to the availability of these platforms.

## 6. Installation, Training.

6.1 *Installation.* The control is designed to work on Microsoft Dynamics 365 CE version 9.2. Instructions are included on the configuration page within the Dynamics CE. The license for the use of the control does not cover installation, which can be performed for the Licensee at additional cost.

6.2 *Training.* Training is not included within this agreement. Training can be performed for the Licensee at additional cost.

## 7. Warranties.

7.1 The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

7.2 The Licensor warrants to the Licensee that:

- (a) the Software will be supplied free from Software Defects to the best knowledge of the Licensor.
- (c) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware, and other malicious software programs

7.3 The Licensor warrants to the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.

7.4 The Licensor warrants to the Licensee that the Software, when used by the Licensee in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

7.5 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the Licensee in accordance with this Agreement infringes any person's Intellectual Property Rights, the Licensor may, acting reasonably, at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights; or
- (b) procure for the Licensee the right to use the Software in accordance with this Agreement; or
- (c) terminate the agreement. Any licence fees that have already been paid for the remaining term will be repaid on a pro-rata basis using full months.

7.6 The Licensor warrants that it does not require access to the Licensee's data and the control does not make a record of the companies searched or the data returned, outside of the controls primary purpose of returning data to be stored in Dynamics CE.

7.7 All of the warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **8. Acknowledgements and warranty limitations**

8.1 The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

8.2 The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be entirely secure.

8.3 The Licensee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

8.4 The Licensee acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

## **9. Limitations and exclusions of liability**

9.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;

- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in this Agreement:

- (a) are subject to Clause 9.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

9.3 The Licensor shall not be liable to the Licensee in respect of any loss of profits or anticipated savings.

9.4 The Licensor shall not be liable to the Licensee in respect of any loss of revenue or income.

9.5 The Licensor shall not be liable to the Licensee in respect of any loss of use or production.

9.6 The Licensor shall not be liable to the Licensee in respect of any loss of business, contracts or opportunities.

9.7 The Licensor shall not be liable to the Licensee in respect of any loss or corruption of any data, database or software.

9.8 The Licensor shall not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.

## **10. Termination**

10.1 The Licensor may terminate this Agreement by giving to the Licensee [not less than 30 days'] written notice of termination, expiring at the end of any calendar month. Any licence fees that have already been paid for the remaining term will be repaid on a pro-rata basis using full months.

10.2 The Licensee may terminate this Agreement by giving to the Licensor [not less than 60 days'] written notice of termination, expiring at the end of any calendar month. Any licence fees that have already been paid for the remaining term following the termination period will be repaid on a pro-rata basis using full months at a rate of 80%.

10.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
- (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days

following the giving of a written notice to the other party requiring the breach to be remedied]; or

- (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).

10.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved;
  - (ii) ceases to conduct all (or substantially all) of its business;
  - (iii) is or becomes unable to pay its debts as they fall due;
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[ (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement)]; or

10.5 The Licensor may terminate this Agreement immediately by giving written notice to the Licensee if:

- (a) any amount due to be paid by the Licensee to the Licensor under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Licensor has given to the Licensee at least [30 days'] written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 10.5.

## **11. Effects of termination**

11.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely).

11.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

11.3 For the avoidance of doubt, the licences of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the Software upon the termination of this Agreement.

11.4 Within 10 Business Days following the termination of this Agreement, the Licensee shall:

- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
- (b) irrevocably delete from all computer systems in its possession or control all copies of the Software,

and if the Licensor so requests the Licensee shall procure that a director of the Licensee certifies to the Licensor, in a written document signed by that person and provided to the Licensor within 5 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of this Clause 13.4.

## 12. Intellectual Property Rights

12.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor.

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models and rights in designs);

## EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY Dean Holmes on XXXXX, duly authorised for and on behalf of the Licensor:

CloudFlow Limited

SIGNED BY [.....] on [.....], duly authorised for and on behalf of the Licensee]:

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