

Cloudpurge End User Licence Agreement

By downloading, installing, copying, accessing or using the Application, you agree to the terms of this End User Licence Agreement. If you are accepting these terms on behalf of another person or company or other legal entity, you represent and warrant that you have full authority to bind that person, company or legal entity to this Agreement.

If you do not agree to this Agreement, you must cease usage of the Application, or any of Cloudpurge's products or services, immediately.

1 Definitions

The following definitions apply unless the context requires otherwise.

Application means Cloudpurge's software application, as described in the Master Services Agreement or Sell-through Letter, licensed by you pursuant to this Agreement that you Use either through a cloud based system or as deployed on your designated computer system and network, that protects your business's use of the Internet, online presence and existing content, and it includes but is not limited to any and all improvements, developments, modifications, derivatives and variations of such software and/or application from time to time and where the context permits, it includes any Documentation.

Cloudpurge means Cloudpurge Pty Ltd (ACN 612 621 342).

Business Day means a day on which banks are generally open for business in Victoria, other than a Saturday, Sunday or public holiday.

Confidential Information means the confidential information of a party and includes information relating to, in the case of Cloudpurge:

- (a) its personnel, policies and business strategies;
- (b) the terms upon which the Application and other products have been supplied, installed and/or supported pursuant to this Agreement;
- (c) the pricing and payment terms set out in this Agreement;
- (d) the design and content of the Application and the Documentation; and
- (e) any information made available to you via the Application and/or the Website.

Your Material means the Data and any Material which is owned by you or in which the Intellectual Property Rights are owned by you.

Data means all and any information, data, materials and other item (other than computer software) stored in, processed by or retrieved through the Application, or intended to be stored in, processed by or retrieved from, the Application, excluding any statistics relating to the performance of the Application;

Documentation means the authorised user guides and manuals that are delivered or made available by Cloudpurge to you for use with the Application.

Force Majeure means a circumstance beyond the reasonable control of a party and which results in that party being unable to observe or perform an obligation on time under this Agreement (other than an obligation to make a payment). Such circumstances include but are not limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and

(c) failure of internet and telecommunication services.

Intellectual Property Rights means all intellectual property rights and proprietary rights (whether registered or unregistered) including but not limited to: any processes, formulae, technology, systems, reports, drawings, specifications, computer software (including source codes and object codes), blue-prints, patents, patent applications, discoveries, inventions, improvements, trade secrets, technical data, research data, know-how, logos, registered and unregistered trade marks and service marks, registered and unregistered designs, design rights, rights in circuit layouts, copyright and the right to keep confidential information confidential and any other rights in the nature of intellectual property rights.

Master Services Agreement means the agreement of the same name entered into between the Users and Cloudpurge.

Material means Cloudpurge's present and future Intellectual Property Rights, document templates, report definitions, software (including source and object code), inventions, and other materials in any media whatsoever.

New Material means material that is specifically created, written, developed or otherwise brought into existence by or on behalf of Cloudpurge for the sole purpose of providing the Application or the New Releases to you.

New Release means:

- (a) a new release of the Application providing for a significant change in the technology; and/or
- (b) a new generally available version of the Application containing corrections of programming errors and/or functional enhancements.

Representative means any officer, employee, agent, consultant, contractor or other representative.

Reseller means the reseller referenced in the Sell-through letter.

Reseller Agreement means the agreement entered into between the Users and the Reseller referenced in the Sell-through Letter.

Sell-through Letter means a letter issued by the Reseller to Cloudpurge confirming the Application to be licensed to you.

Use means to directly or indirectly activate the processing capabilities of the Application, load, execute, access, utilise, store, employ the Application, or display information resulting from such capabilities.

Users means you or your Representative who have Use of the Application.

Website means the website at <https://cloudpurge.com/>.

2 Licence Grants and Restrictions

2.1 Subject to the terms and conditions of this Agreement, Cloudpurge hereby grants to you a non-exclusive, non-transferable right to access and use the Application solely for your own internal business operations and as listed in the Master Services Agreement or the Sell-through Letter.

2.2 Except as otherwise expressly permitted under this Agreement, you must not (and must not allow a third party) to:

- (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Application or any portion thereof;
- (b) distribute, transfer, grant sub-licences to, or otherwise make available the Application

- or any portion thereof to third parties, including as an application service provider, service bureau, or rental source, unless otherwise authorised in writing by Cloudpurge;
- (c) embed or incorporate in any manner the Application into other applications of yours or third parties, other than as authorised in applicable Documentation or by Cloudpurge in writing;
 - (d) create modifications to or derivative works of the Application;
 - (e) reproduce the Application;
 - (f) attempt to modify, alter, or circumvent any licence control and protection mechanisms within the Application;
 - (g) use or transmit the Application in violation of any applicable law, rule, or regulation;
 - (h) demonstrate the Application to a competitor of Cloudpurge;
 - (i) intentionally access, use, or copy any portion of the Documentation or the Application to directly or indirectly develop, promote, distribute, sell, or support any product or service that is competitive with the Application; or
 - (j) remove, obscure, or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink, or other designation included on any display screen within the Application (the “**Cloudpurge’s Marks**”).

You shall be responsible for all damages and liabilities incurred as a result of such actions.

3 New Releases

- 3.1 The terms of this Agreement will govern any New Releases that Cloudpurge may provide, unless such New Releases are accompanied by a separate licence agreement in which case the terms of that separate licence agreement will govern.

4 Your Obligations

- 4.1 You will comply with and will be responsible for your Users’ compliance with the terms and conditions of this Agreement, Cloudpurge’s Use Policy available via the Application or the Website, and all applicable laws and regulations with respect to use of the Application. You shall be responsible for all damages and liabilities incurred by Cloudpurge as a result of failure to comply with this clause.
- 4.2 You warrant that not more than the number of Users agreed to by you in the Master Services Agreement or the Sell-through Letter will access the Application. You will notify Cloudpurge immediately if the volume of agreed Users is exceeded.
- 4.3 You are responsible for procuring, installing, configuring, and maintaining all hardware and operating systems required to run the Application, as set forth in the Documentation.
- 4.4 You acknowledge that the operation of the Application may not always be completely error free and without interruption. You must:
- (a) implement data backup and verification measures in accordance with best industry practice; and
 - (b) keep in force throughout the term of this Agreement appropriate insurance against any loss that may be suffered in the event of any failure, defect or error in the Application. Cloudpurge is not liable for any loss suffered by you as a result of a failure to comply with this requirement.

- 4.5 You may print and make such number of copies of the Documentation as it reasonably requires to use the Application in accordance with this Agreement. All copies are the property of Cloudpurge (or its third party licensors) and must contain all proprietary notices that appear on the original copy.
- 4.6 You are solely responsible for any data, text, files, information, images, graphics, and other content or materials that its Users upload to the Application (collectively, “**User Data**”). Cloudpurge does not claim ownership of any User Data. By submitting and uploading User Data, you grant Cloudpurge a non-exclusive, worldwide, transferable, irrevocable right and licence to use, store, reproduce, modify, distribute, publicly perform, and publicly display the User Data for the purpose of providing the Application to you and for deidentifying, benchmarking and reporting purposes.
- 4.7 To ensure compliance with this Agreement, if Cloudpurge reasonably believes that you have breached this licence, you agree that upon reasonable advance written notice, Cloudpurge or any of its authorised representative shall have the right to inspect and access any of your business premises, computer systems and records kept in relation to the Application. Any such inspection will be conducted during normal business hours or other times agreed by you, at your principal place of business. If you have breached the term of this licence, then you will pay for all cost related to the inspection, including any third party costs.

5 Intellectual Property

- 5.1 Any Intellectual Property Rights:
- (a) in the Application;
 - (b) database(s) design;
 - (c) in the Documentation;
 - (d) in any changes, modifications, developments or enhancements made to the Application or the Documentation by Cloudpurge or anyone else (including your specific modifications);
 - (e) arising from Cloudpurge's provision of the Application; and
 - (f) on the Website,
- are owned and are the sole property of Cloudpurge or its licensors.
- 5.2 Cloudpurge will indemnify you against any finally awarded damages or settlement amounts approved by Cloudpurge arising out of or in connection with a claim that the use of the Application in accordance with this Agreement infringes a third party's copyright or an Australian patent, provided that you:
- (a) notify Cloudpurge immediately of any infringement or claim of which it is aware and does not make any admissions without Cloudpurge's prior written consent;
 - (b) at Cloudpurge's request and expense, allow Cloudpurge to conduct and/or settle all negotiations and litigation resulting from any such claim,
 - (c) assist and fully co-operate with Cloudpurge in the defence or settlement of the claim; and
 - (d) do not take and ensure that no other entity or Representative takes any action that prejudices Cloudpurge's ability to defend or settle the claim.
- 5.3 Notwithstanding anything to the contrary in this Agreement, Cloudpurge is not responsible or liable for any infringement of a third party's Intellectual Property Rights if the infringement would

not otherwise exist except for:

- (a) the use of the Application with any other software or equipment;
- (b) any corrections to or modifications of the Application database other than by Cloudpurge;
- (c) modifications to the Application in compliance with your specifications or requirements;
- (d) a failure to promptly implement a New Release made available by Cloudpurge;
- (e) any breach of this Agreement by you, or any unauthorised use, access or modification to the Application by you or a third party,

and in such circumstances, Cloudpurge's obligations under clause 5.2 do not apply.

- 5.4 If the Application is or is likely to become the subject of a claim of infringement, Cloudpurge may at its sole discretion:
- (a) procure for you the right to use the Application or the affected part of it;
 - (b) replace or modify the Application to make it non-infringing; or
 - (c) require the return of the Application.
- 5.5 If Cloudpurge's use or possession of the Application is determined by an independent tribunal of fact or law to infringe the Intellectual Property Rights of a third person, you must cease using the Application immediately.
- 5.6 To the extent permitted by law and subject to clause 11.5, clauses 5.2 to 5.5 state Cloudpurge's entire liability and your sole and exclusive remedies for any claim of infringement of third party's rights.
- 5.7 Cloudpurge acknowledges that title to, and Intellectual Property Rights in, all Your Material remains in you.
- 5.8 All enhancements and modifications to Your Material shall be deemed New Material for the purposes of this Agreement, and all such enhancements and modifications to the New Material immediately vest in Cloudpurge.
- 5.9 Cloudpurge hereby grants a non-exclusive, non-transferable, royalty-free, perpetual licence to you to use and modify the New Material created by Cloudpurge in the provision of the Application. This clause does not apply to any Material or Intellectual Property Rights which are brought into existence by Cloudpurge or on behalf of Cloudpurge which is not for the sole purpose of the provision of the Application to you, including but not limited to, any processes, methods, material (including modifications, updates or enhancements to Cloudpurges presently existing and future Intellectual Property Rights or Existing Material whether in respect to you or any other client of Cloudpurge).

6 Liability

- 6.1 Subject to clauses 6.2, 6.4 and 11.5 and otherwise to the extent permitted by law:
- (a) the total aggregate liability of Cloudpurge to you for loss or damage arising from or in relation to this Agreement, whether arising from breach of contract, tort (including negligence), in equity or otherwise, is limited to the fees paid by you to the Reseller for the 6-month period immediately preceding the event giving rise to the loss or damage;
 - (b) Cloudpurge is not liable to you for:
 - (i) any loss of data, goodwill, interest, revenues, profits, contracts or any

inaccuracy of data; or

- (ii) any indirect, special, incidental, consequential, exemplary, punitive, or aggravated damages or loss; or
- (iii) any internal costs and expenses (whether director indirect) howsoever incurred,

arising from the negligence of, or any breach of this Agreement by, Cloudpurge or its Representatives even if Cloudpurge has been advised of the possibility that such damages may occur,

- (c) Cloudpurge is not liable for loss or damage arising from third party products or services.

6.2 Nothing in this Agreement limits Cloudpurge's liability to an individual for death or personal injury caused by a negligent or wilful act or omission of Cloudpurge or its Representatives.

6.3 No warranty, condition or term ("term") applies to this Agreement unless it is set out in this Agreement or is implied by law and cannot be excluded, modified or restricted. Without limiting clause 6.4:

- (a) the Application is supplied on an "as is" basis; and
- (b) the Application is suitable for use in Australia and New Zealand only. If you intend to use the Application in, or in relation to, any other jurisdiction it does so at its own risk.

6.4 If:

- (a) any term is implied into this Agreement by law, and the law prohibits the exclusion, restriction or modification of that term or liability under it, then that term shall be deemed to be included in this Agreement;
- (b) a statutory guarantee applies to goods or services supplied under this Agreement;

then, to the extent permitted by law, Cloudpurge's liability for breach of that term or guarantee is limited to (at Cloudpurge's option):

- (c) in relation to services, re-supplying the services or paying for them to be re-supplied; and
- (d) in relation to goods, re-supplying them, or paying for having them re-supplied.

6.5 You will at all times indemnify and hold harmless Cloudpurge and its Representatives from and against any loss, costs (including reasonable legal costs and expenses) or liability incurred or suffered by Cloudpurge or its Representatives arising from any proceedings against Cloudpurge or its Representatives where such loss, costs or liability was caused by:

- (a) a breach by you of your obligations under this Agreement (or any other applicable licence terms);
- (b) any wilful, unlawful or negligent act or omission of you or your Representatives; or
- (c) a claim by a third party alleging an infringement of that third party's Intellectual Property Rights if such infringement relates to an act or omission of you, your Representatives or a User.

7 Privacy

7.1 Cloudpurge takes your privacy seriously and any information provided through your use of the Application is subject to Cloudpurge's Privacy Policy, which is available at <https://www.cloudpurge.com/documents>

7.2 .

8 Confidentiality

8.1 Except as provided in this clause, a party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.

8.2 A party is not in breach of clause 8.1:

(a) in circumstances where it is legally compelled to disclose the other party's Confidential Information; or

(b) if it discloses Confidential Information (other than of a technical nature) to its related companies, solicitors, auditors, insurers and accountants or in the case of Cloudpurge, to third parties solely for the purposes of performing this Agreement.

8.3 Each party must take all reasonable steps to ensure that its employees, agents and sub-contractors do not make public or disclose the other party's Confidential Information.

8.4 Each party agrees to promptly notify the other party of any unauthorised access to or disclosure of the Confidential Information.

8.5 The receiving party agrees that any breach of this clause may cause irreparable harm to the disclosing party, and such disclosing party shall be entitled to seek equitable relief in addition to all other remedies provided by this Agreement or available at law.

8.6 You must on demand return to Cloudpurge any Documentation supplied by Cloudpurge in connection with this Agreement.

9 Termination

9.1 This Agreement becomes effective when you click on the "Accept" button, or when you in any other way use the Application, which constitutes your acceptance of this Agreement. Once accepted, this Agreement remains valid until terminated by you or Cloudpurge.

9.2 You may terminate this Agreement in accordance with the terms and conditions of the Reseller Agreement.

9.3 Cloudpurge may terminate this Agreement or suspend your Use of the Application if:

(a) you fail to comply with any of the terms and conditions of this Agreement or the Reseller Agreement;

(b) Cloudpurge is required to do so by law;

(c) the partner, if any, with whom Cloudpurge offered the services to you has terminated its relationship with Cloudpurge or ceased to offer the services to you;

(d) Cloudpurge is transitioning to no longer providing the services to users in the country in which you are resident or from which you use the service; or

(e) the provision of the services to you by Cloudpurge is, in the opinion of Cloudpurge, no longer commercially viable.

9.4 You agree that, upon termination, you shall cease usage of the Application. Clause 5, 6, 8 and 11 and any other clauses which are capable of having effect after the expiration or termination of this Agreement will continue to remain in full force and effect.

10 Dispute Resolution

10.1 Negotiation

Except as is expressly provided for in this Agreement, if there is a dispute or difference between the parties arising out of or in connection with this Agreement (**Dispute**), then within five Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

10.2 Mediation

- (a) If the Dispute is not settled within thirty (30) days of notification under clause 10.1, the parties must submit the Dispute to mediation administered by the Australian Commercial Disputes Centre.
- (b) The Australian Commercial Disputes Centre's Guidelines for Commercial Mediation apply to any mediation under this Agreement and the parties must comply with those rules.
- (c) Any mediation meetings and proceedings under this clause must be held in Melbourne, Victoria.

10.3 Arbitration

- (a) This arbitration clause applies if you are not based in Australia or New Zealand.
- (b) In the event that the Dispute is not resolved at the conclusion of the mediation, both parties are prohibited from instituting legal proceedings concerning the subject matter of the Dispute and the Dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, will be resolved by arbitration in accordance with the *ICC Rules of Arbitration* (or any rules which supersede these rules). The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.
- (c) This clause 10.3 may be used as a bar to legal proceedings issued in any Court in any country which has ratified the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958*.

10.4 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

10.5 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement.

11 General Provisions

11.1 Force Majeure

Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of a Force Majeure event.

11.2 Announcements

Cloudpurge may identify you as a customer of Cloudpurge and a user of the Application on Cloudpurge's published customer lists, web site, and in its marketing and advertising materials and announcements. Cloudpurge may also include non-confidential information about your

business and implementation of the Application. Cloudpurge may release updated information from time to time.

11.3 Assignment

- (a) The terms of this Agreement shall be binding on the parties and their successors.
- (b) Cloudpurge and you may assign its rights and obligations under this Agreement:
 - (i) to a third party if any part of the Cloudpurge's business or your business is sold or transferred to that third party; and/or
 - (ii) provided that Cloudpurge or you (as applicable) can demonstrate that the assignee is able to perform its obligations under this Agreement.

Cloudpurge and you may not otherwise assign its rights under this Agreement without the consent of the other party and such consent will not be unreasonably withheld or delayed.

- (c) Any attempted assignment, transfer, or delegation in violation of the foregoing shall be null and void.

11.4 Entire Agreement

The Agreement, the Master Services Agreement or the Sell-through Letter (whichever applies to you), and any variations to it embody the entire understanding and agreement between the parties as to its subject matter. All previous negotiations, understandings, representations or warranties ("other understandings") in relation to the subject matter of this Agreement are superseded by this Agreement. You acknowledge and agree that in entering into this Agreement it is not relying on any other understandings (including any express warranties) which are not expressly set out in this Agreement.

11.5 Compliance with the Australian Consumer Law

If the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) applies to any supply of goods or services under this Agreement, nothing in this Agreement excludes, restricts or modifies a guarantee, right, liability or remedy to the extent that to do so would render a term void or be a breach of the *Competition and Consumer Act 2010*.

11.6 Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

11.7 Severability

- (a) Any provision in this Agreement that is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party.
- (b) Upon such determination, the parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to affect the original intention of the parties.

11.8 Governing law & Jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws of Victoria.
- (b) With respect to any legal action or proceedings which may be brought with respect to this Agreement or any transaction contemplated by this Agreement (each, a Relevant Action), each party irrevocably and unconditionally:
 - (i) submits to and accepts, for itself and in respect of its assets, the non-exclusive jurisdiction of courts exercising jurisdiction in Melbourne, Victoria in connection with matters concerning this Agreement; and
 - (ii) agrees that it will not object to the venue or claim that the Relevant Action has been brought in an inconvenient forum.
- (c) The United Nations Convention on Contracts for the International Sale of Goods (and any adopting legislation) does not apply to this Agreement.

11.9 Limitation of action

Subject to clause 11.5 and to the maximum extent permitted by law, other than in relation to a claim for breach of Cloudpurge's Intellectual Property Rights, no claim can be made under this Agreement more than two (2) years after;

- (a) the discovery of the circumstances giving rise to the claim; or
- (b) the effective date of termination of this Agreement.

11.10 Order of Priority

If you issue an order to a Reseller and the terms and conditions of the order conflict with the terms and conditions of this Agreement or the Sell-through Letter, then the terms and conditions specified in this Agreement and in the Sell-through Letter shall prevail.

If you enter into a Master Services Agreement with Cloudpurge and the terms and conditions of the Master Services Agreement conflict with the terms and conditions of this Agreement, then the terms and conditions specified in this Master Services Agreement shall prevail.