



End User License Agreement

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1 Agreement

1.1 Agreement

1.1.1 Detail

These license terms are an agreement between Clever Dynamics, a trading entity of Technology Management (Midlands) Ltd (or based on where you are located, one of its partners) and you. Please read them. They apply to the software named above, which includes the media on which you received it, if any. The terms also apply to any Clever Dynamics

- updates,
- supplements,
- internet-based services, and
- support services

for this software, unless other terms accompany those items. If so, those terms apply. These license terms supersede the license terms embedded in the software.

By installing, having installed, or using the software, you accept these terms. If you do not accept them, do not install, have installed or use the software.

1.1.2 Agreed and accepted

If you comply with these terms, you have the rights detailed within this document.

1.2 Overview

1.2.1 Software

The software may include

- server software;
- client software that can be installed on devices and used with the server software;
- additional components that may be separately licensed; and
- any fixes, patches or updates for the software.

1.2.2 License model

The software is licensed based on

- the number of copies of system databases that you install;
- the number of your users that access the system database; and
- additional components you license.

1.3 Definitions

- “you” means the legal entity that has agreed to these license terms and your affiliates.
- “affiliates” means
 - I. for you, any legal entity that you own, which owns you, or which is under common ownership with you;
 - II. for Clever Dynamics, any legal entity that Clever Dynamics owns, which owns Clever Dynamics, or which is under common ownership with Clever Dynamics;
- “partner” means business partners of Clever Dynamics authorised by Clever Dynamics to provide licenses
- “ownership” means more than 50% ownership;
- “client software” means the software that allows a single personal computer, workstation, terminal, handheld computer, personal digital assistant, or other electronic device (“device”) to access or use the server software or to use certain aspects of the server software when disconnected from the server;
- “server software” means the software that provides services or functionality on your server (your computers capable of running the server software are “servers”); and
- “system database” means the underlying database that controls your users and financial reporting units.

1.4 Installation and use rights

1.4.1 Server software

You may install an unlimited number of copies of the server software to access your system database. However, you may only use the number of copies that your license permits. You may not duplicate the use of each license without Clever Dynamics’ prior written consent.

1.4.2 Client software

You may install an unlimited number of copies of any client software. However, you may use the client software only with the server software.

1.4.3 Additional components

You may install an unlimited number of copies of the additional components you have licensed for your system database. You must obtain a separate license for each system database if you wish to install an additional component for multiple system databases. You may not duplicate the use of each license without Clever Dynamics' express written consent.

1.5 Additional licensing requirements and/or use rights

1.5.1 User Licenses

In addition to the server software license, you must acquire user licenses for the total number of users that access the system database directly or indirectly. User licenses are specific to a system database and may not be used with or shared among different system databases. You may license concurrent users, named users, or the external connector depending on the type of access to the system database that the user requires. For users that are your or your affiliates' employees, contractors or agents, you must license concurrent users and named users. For all other access to the system database, including access where no individual users are involved you must license either the external connector, concurrent users or named users. "Concurrent users" are licenses that allow any individual to access the system database. The number of concurrent users licensed refers to the maximum number of individuals that may access the system database simultaneously. "Named users" are licenses that are specific to individual users and may not be shared among individual users. "Third party users" are any concurrent user or named user that is not your or your affiliates' employees, contractors or agents. "External connector" is a license that allows any third-party user, application or device to access the system database.

1.5.2 Multiplexing

Hardware or software you use to:

- pool connections,
- reroute information,
- reduce the number of devices or users that directly access or use the software, or
- reduce the number of devices or users the software directly manages, (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses you need.

1.5.3 External connector licenses

You must assign each external connector license you acquire to a system database. Each external connector license assigned to a system database permits any number of third-party users, applications or devices to access that system database. You do not need concurrent or named user licenses for those users. You may not use the external connector for business process outsourcing purposes.

1.5.4 Third party hosting

You may have a third party host the software on your behalf solely for access by you and your affiliates. You may not permit your third-party hosting vendor to allow access to the software by unaffiliated third parties except as otherwise allowed through an external connector license. Your third-party hosting vendor must agree to be bound by these terms.

1.5.5 License grant for templates

You may copy and use templates provided with the software and identified for such use in documents and projects that you create. You may distribute those documents and projects non-commercially.

1.5.6 Modification

You may modify the software only as necessary to use it for your internal business purposes if you received it in source code form or you have licensed tools from Clever Dynamics that allow you to modify the object code form. You agree that Clever Dynamics is not responsible for any problems that result from modifications made by you or a third party or that are caused by third party hardware or software.

1.5.7 Additional functionality

Clever Dynamics may provide additional functionality for the software. Other license terms and fees may apply.

1.6 Internet-based services

Clever Dynamics provides Internet-based services with the software. It may change or cancel them at any time.

1.6.1 Consent for Internet-Based Services

Certain features in the software may connect to Clever Dynamics or third-party service provider computer systems over the Internet. In some cases, you will not receive a separate notice when they connect. You may switch off these features or not use them. For more information about these features, see the software documentation. By using these features, you consent to the transmission of this information. Clever Dynamics does not use the information to identify or contact you.

1.6.2 Computer Information

The following features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software. Clever Dynamics uses this information to make the Internet-based services available to you.

1.6.3 Web Content Features

Features in the software can retrieve related content from Clever Dynamics and provide it to you. To provide the content, these features send to Clever Dynamics the type of operating system, name and version of the software you are using, type of browser and language code of the device where you installed the software. Examples of these features are clip art, templates, online training, online assistance and application help. You may choose not to use these web content features.

1.6.4 Misuse of Internet-based Services

You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorised access to any service, data, account or network by any means.

1.7 Benchmark testing

You must obtain Clever Dynamics's prior written approval to disclose to a third party the results of any benchmark test of the software.

1.8 Scope of license

The software is licensed; it is not sold. This agreement only gives you some rights to use the software. Clever Dynamics reserves all other rights. Unless applicable law or a separate written contract with Clever Dynamics gives you more rights despite this limitation, you may use the software only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. You may only use the software for your internal business purposes. You may not

- work around any technical limitations in the software;
- reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
- make more copies of the software than specified in this agreement or allowed by applicable law, despite this limitation;
- publish the software for others to copy;
- rent, lease or lend the software; or
- use the software for commercial software hosting services. However, you may use the software to provide business process outsourcing services to unaffiliated third parties provided that they do not access the software or system database.

Your rights to use the software are perpetual but may be revoked if you or your affiliates do not comply with the terms of this agreement. Rights to access the server software do not give you any right to implement Clever Dynamics patents or other Clever Dynamics intellectual property in software or devices that access the server.

1.9 Backup copy

You may make multiple copies of the software for backup, development and testing purposes, so long as such copies are not used in production and the development is for your internal use only. Your backup copies may be hosted by a third party on your behalf.

1.10 Fail-over rights

You may run a single passive fail-over instance of your system database for temporary support.

1.11 License transfer

You may not transfer the software to a third party without Clever Dynamics' prior written consent. If permitted, there may be additional charges for transferring the software to a third party.

1.12 Documentation

Any person that has valid access to your computer or internal network may copy and use the documentation for your internal, reference purposes.

1.13 Downgrade

Instead of installing the software, you may install and use an earlier version. This agreement applies to your use of the earlier version. If the earlier version includes different components, any terms for those components in the agreement that comes with the earlier version apply to your use of them. Clever Dynamics is not obligated to supply earlier versions to you. At any time, you may replace an earlier version with this version of the software.

1.14 Export restrictions

You must comply with all domestic and international export laws and regulations that apply to the software. These laws may include restrictions on destinations, end users and end use.

1.15 Entire agreement

This agreement (including the warranty below), and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software.

1.16 Applicable law

1.16.1 United Kingdom

If you acquired the software in the United Kingdom, English law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the country where you are located govern all other claims, including claims under consumer protection laws, unfair competition laws, and in tort.

1.16.2 Outside the United Kingdom

If you acquired the software in any other country, the laws of that country apply.

1.17 Legal effect

This agreement describes certain legal rights. You may have other rights under the laws of your region or country. You may also have rights with respect to the party from whom you acquired the software. This agreement does not change your rights under the laws of your region or country if the laws of your region or country do not permit it to do so.

1.18 Defence of infringement and misappropriation claims

Clever Dynamics will defend you against any claims made by an unaffiliated third party that the software infringes its patent, copyright or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which Clever Dynamics consents).

You must notify us promptly in writing of the claim and give us sole control over its defence or settlement. You agree to provide us with reasonable assistance in defending the claim, and Clever Dynamics will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms “misappropriation” and “trade secret” are used as defined in the Uniform Trade Secrets Act, except in the case of claims arising outside the United Kingdom, in which case “misappropriation” will mean intentionally unlawful use and “trade secret” will mean “undisclosed information” as specified in Article 39.2 of the TRIPs agreement.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on

- I. your use of the software after Clever Dynamics notifies you to discontinue use due to such a claim;
- II. your combining the software with a non-Clever Dynamics product, data or business process including third party add-ons or programs;
- III. damages attributable to the value of the use of a non-Clever Dynamics product, data or business process;
- IV. your altering or modifying the software, including any modifications by third parties;
- V. your distribution of the software to, or its use for the benefit of, any third party;
- VI. your use of Clever Dynamics trademark(s) without express written consent to do so; or
- VII. for any trade secret claim, your acquiring a trade secret
 - a. through improper means;
 - b. under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

- c. from a person (other than Clever Dynamics or its affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will reimburse us for any costs or damages that result from these actions.

If Clever Dynamics receives information concerning an infringement or misappropriation claim related to the software, Clever Dynamics may, at its expense and without obligation to do so, either

- I. procure for you the right to continue to run the software; or
- II. modify the software or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the software immediately. If, as a result of an infringement or misappropriation claim, your use of the software is enjoined by a court of competent jurisdiction, Clever Dynamics will, at its option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate this license.

If any other type of third-party claim is brought against you regarding Clever Dynamics' intellectual property, you must notify us promptly in writing. Clever Dynamics may, at its option, choose to treat these claims as being covered by this section. This Section 2.18 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

1.19 Limitation on and exclusion of damages

You can recover from Clever Dynamics and its suppliers only direct damages up to the amount you paid for the software except for claims covered by Section 2.18. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to

- anything related to the software, services, content (including code) on third party Internet sites, or third-party programs; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if

- repair, replacement or a refund for the software does not fully compensate you for any losses; or
- Clever Dynamics knew or should have known about the possibility of the damages.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.