

Cloud CTRL

CLOUD CTRL CUSTOMER AGREEMENT

Effective starting September 16, 2024

This customer agreement ("**Agreement**") is a legal agreement between **you** and SixPivot Pty Ltd ABN 59 606 416 693 and its products "Cloud Ctrl"('we', 'our', 'us'), an Australian company (together the "**parties**" and each a "**party**"). If you are agreeing to this Agreement not as an individual but on behalf of your company, then a reference to "you" or "Customer" in this Agreement is a reference to the company, and the company will be bound by this Agreement. We may modify the terms of this Agreement from time to time subject to Section 14 (*Changes to this Agreement*) below.

By clicking on the "I agree" (or similar button or checkbox or by adding your cloud subscriptions) that is presented to you at the time of your Order or when subscribing for one of our services, or by using or accessing our Products, you agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you must immediately uninstall or cease using the Products.

Terms and Conditions of Use

In this document: We, Our and Us means in any particular instance, SixPivot Pty Ltd ABN 59 606 416 693; the Website means www.CloudCtrl.com.au and all password protected areas that are accessible by registered customers via the Website. You and Your means the natural person or entity using, browsing or otherwise accessing any content or data on the Website, including any other websites related to CloudCtrl which are owned and/or operated by Us and/or our related entities, subdomains of the Website, or related top-level domains including www.CloudCtrl.com.au, mobile sites, apps, APIs and widgets (together, Our Websites).

You acknowledge and agree that by using, browsing or otherwise accessing Our Websites, You agree to be bound by these terms and conditions of use (Terms) and Our Privacy Policy and all terms and conditions incorporated by reference. You acknowledge that We provide use and access to Our Websites to You subject to these Terms.

We reserve the right to change any of the Terms or other conditions for using Our Websites at any time by publishing new terms or conditions on the Website. Your use of Our Websites constitutes Your acceptance of those terms and conditions as amended or replaced from time to time. Should You object to any of Our terms and conditions of use or other notices on Our Websites Your sole option is to immediately cease Your use of Our Websites.

1. Grant and Scope of Agreement

1.1. Scope. This Agreement governs your initial purchase as well as any future purchases made by you that reference this Agreement. This Agreement also includes our Privacy Policy, our Acceptable Use Policy, any Orders, and any other referenced policies and attachments. For the absence of doubt, this Agreement governs your use of or reliance on:

- (a) our cloud-hosted online services, currently designated as “**Cloud Ctrl**” ,
- (together with any related documentation, the **Products**), and
- (c) any related support or maintenance services provided by us (“**Support Services**”).

1.2. Rights. You have no rights in, or to, any Product or Support Service other than the rights granted under this Agreement.

1.3. Cloud Services. Section 3 (*Cloud Ctrl Services Terms*) applies specifically to our Cloud Services. All other terms of this Agreement apply to all Products unless otherwise specified.

1.4. Affiliates. Your affiliates shall be entitled to make full use of the Products in accordance with the terms of this Agreement to the same extent as if they were you. For purposes of this Agreement, “Affiliate” means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

2. Accounts, Orders, Payments, Refunds and Termination

2.1. Account Registration. You must register an **Account** with us at our website in order to start using Cloud Ctrl and manage access to our Cloud Services. Your account information must be kept accurate and complete. You must keep your account information current, so that we may send notices, statements, and other information to you by email or through your Account. You are responsible for all actions taken through your Account, including Subscriptions made.

2.2. Orders. You create an **Order** by following the subscription flows on our website, or by requesting an invoice from us. All Orders are intent only and are *not binding* (on you or on us) until payment is received in full by us. Cloud Ctrl is billed on a monthly subscription, a new Order is raised automatically at the end of each billing period unless you cancel your subscription or you have requested a different billing cycle and we have agreed and/or you are working through one of our partners, resellers or distributors who may vary your billing period.

2.3. Cloud Vendor Subscriptions. Cloud Ctrl is licensed, and / or our Cloud Services are provided, according to the number of subscriptions you add into Cloud Ctrl across all of your cloud vendors.

2.4. Refund policy and Termination. You may terminate your initial Order of the applicable Cloud Services under this Agreement, for no reason or any reason, by providing notice of termination. At your request (which may be made through your Account or by contacting us), we may disable access to the Cloud Service.

Cloud Ctrl offers a FREE 14 day trial period utilising our demo environment or in some cases you can use the product fully with your own subscriptions. If post the trial period you no longer wish to continue with the service and you advise us in writing within 30 days of beginning your trial you will not be charged for the service. If you do not advise us within 30 days of your trial starting that you no longer wish to continue you have accepted our terms and conditions and will be charged monthly for the use of our service until you provide us a statement in writing that you wish to terminate the service. As you are charged in areas you will be charged for the previous month and for the month in which you terminate.

3. Cloud Services Terms

3.1. Access to Cloud Services. Subject to your acceptance and continued compliance with the terms of this Agreement, we grant you a non-exclusive right to access and use Cloud Ctrl, during the applicable Subscription Term. You acknowledge that the Cloud Services are online, subscription-based products hosted and managed by us, which may change from time to time.

3.2. Subscription Term & Renewals. Once you subscribe to Cloud Ctrl the term during which you will have access to our Cloud Services will be up until either party terminate your contract. Unless noted otherwise all subscriptions will automatically renew month to month or for periods equal to your initial Subscription Term unless you cancel your subscription. If you cancel or decide to terminate your subscription, we will refund your subscription as per Section 2.4 (*Refund Policy*). You acknowledge that your subscription is subject to automatic renewals and you consent to and accept responsibility for all related recurring charges to your applicable payment method without further authorisation from you and without further notice unless required by law. You acknowledge that the amount of the recurring charge may change if the applicable tax rates change, or if there has been a change in the applicable fees (for which, if applicable, you will be given at least 90 days' notice before such change takes effect).

3.3. Billing. The price for your Subscription will be calculated with one of the following methods:

- (a) based on a fixed percentage of maximum annualised projected cloud consumption; or,
- (b) a fixed monthly amount which is based on our capped tier structure on your maximum annualised projected cloud consumption,

as negotiated by you when setting up the Subscription with us or one of our partners, distributors or resellers.

You acknowledge that your bill may vary each billing period, subject to any increase or decrease in your annualised projected consumption.

You will be billed monthly in arrears unless otherwise negotiated, all pricing Tiers (option b) are ex-gst, in AUD and based on an annual projected spend (calculated monthly). Our billing works by recalculating your annualised projected consumption (cloud spend) at the end of each month and you are charged based on that projection. If your cloud projected spend has decreased then the cost of Cloud Ctrl will decrease in alignment, if your cloud projected spend increases then your cost for Cloud Ctrl will increase in alignment (option a) and for option b the same methodology to billing is applied in regards to your spend within the capped tier structure.

3.4. Security of Your Data. We implement and maintain security measures to help protect the Cloud Services and Your Data from security attacks. However, you acknowledge and agree that as a consequence of the inherent nature of the Cloud Services, Your Data will often be transported over networks that are not owned or operated by us, and that we are not responsible for any of Your Data that is lost, intercepted, altered or stored across such networks, except to the extent caused by our negligence or intentional misconduct. You acknowledge that we are unable to guarantee complete security or confidentiality of Your Data or guarantee that third parties will never be able to defeat our security measures or those of our third-party service providers. If we discover or are made aware that any of Your Data has been intercepted, we will follow reporting guidelines if the intercepted data may have contained any personally identifiable information.

3.5. Termination, removal and suspension.

We may terminate this Agreement if you materially breach any provision in this Agreement and fail to cure such breach within five (5) days of written notice of such breach. In addition, either party may terminate this Agreement for any reason or no reason upon thirty (30) days' written notice to the other party. Cloud Ctrl may also terminate this Agreement immediately upon notice to you if it reasonably believes that continuing hereunder could result in business or legal liability for Cloud Ctrl or otherwise harm Cloud Ctrl or its end users.

Effect of Termination. You expressly agree that Cloud Ctrl will have no obligation or liability to you resulting from termination or expiration of this Agreement in accordance with its terms. Upon termination or expiration of this Agreement: you must cease using Cloud Ctrl and you must destroy all Confidential Information in your possession and certify destruction (unless we request that you return such materials to us). You acknowledge that upon termination of the agreement Cloud Ctrl will delete all data pertaining to you and or your End Customers (where applicable) thirty days post termination.

4. Your Data

4.1. Meaning of Your Data. In this Agreement, "**Your Data**" means any data, applications, configuration settings, content, code, images or material of any type that you upload, submit or otherwise provide us or to our Products for any purpose.

4.2. Ownership of Your Data. You are responsible for Your Data. You will retain all right, title and interest in and to Your Data. Subject to the terms of this Agreement, you grant us a worldwide, non-exclusive, royalty-free right to collect, use, transfer and store Your Data solely for the purposes of providing any Product to you or to respond to your support requests.

4.3. Confidentiality of Your Data. We may receive or have access to information (including but not limited to documents, data, technical information, methods and processes, computer programs and scripts, reports, manuals) owned or controlled by you which is proprietary or confidential (confidential information). This happens in various ways, not limited to: when you store them in the Products, or when you include them in a support request that is not marked “public” by you. We agree:

(a) that all such information shall be and shall remain your exclusive property;

9. (b) to limit access to such information to only our authorised employees, contractors, and agents, and including any of our Affiliates under Section 9 & 10 (**Intellectual property and ownership of content Transfer of Rights and Obligations**) (collectively, our “Staff”), who have a need to know such information in the performance of their work;

(c) to inform all of our Staff engaged in handling such information of the confidential character of such information;

(d) to keep, and have our Staff keep, such information confidential;

(e) not to copy, publish, or disclose such information to others or authorize others to copy, publish, disclose such information without your written approval;

(f) to return promptly any copies of such information to owner at your request;

(g) to use such information solely for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between us in writing; and

(h) that, in the event any of the information is required to be produced pursuant to a subpoena, court order, valid legal or administrative process, or other operation of law, we shall notify you of such potential disclosure in order that you may take appropriate action at your own expense to limit or prevent such disclosure, and furnish only that portion of Your Data that has been legally compelled.

Confidential information shall not include information which:

- (i) was known to us before disclosure as evidenced by bona fide written documents;
- (j) is or becomes publicly known through no wrongful act of ours;
- (k) is independently developed by us;
- (l) is disclosed to us by a third party without breach of any obligations of confidentiality.

4.4. Nature of Your Data. You must ensure that Your Data is at all times compliant with all appropriate laws and regulations. You warrant that you have the rights and permissions to provide Your Data to us, and that your transfer of Your Data to use does not violate any laws, regulations or the rights of third parties.

4.5. Personally Identifiable Information. You will not submit to us any personally identifiable information (except as necessary for your Authorised Users to use and access a Product). You will not submit to us any patient, medical or other protected health information regulated by any relevant laws in any country.

4.6. Liability. For the avoidance of all doubt, Cloud Ctrl assumes no responsibility or liability for Your Data other than described in this Section 4, and you shall be solely responsible for Your Data and the consequences of you using, storing, disclosing or transmitting it. We have no obligation to monitor any of Your Data uploaded to the service.

4.7. Deletion of Your Data. We may remove or delete Your Data 30 days after the termination of your relevant Subscription Term, or upon your request.

4.8. Processing of Your Data. We will perform processing actions as part of monitoring and running the Cloud Services and as part of any Support Services.

5. Restrictions

Except as otherwise permitted in this Agreement, or by us in writing, you will not:

- (a) intentionally use any Product in any way that could damage our reputation; or
- (b) rent, lease, sub-license, loan, translate, merge, adapt, vary or modify any Product, without our express written consent.

6. Warranty

6.1. General Warranties. We warrant that:

- (a) we have the legal power and authority to enter into this agreement with you;
- (b) during the License Term or Subscription Term as appropriate ("**Warranty Period**"), the Products will, when properly used, perform substantially as described, provided that the Product is (i) properly used on the computer and with the operating system and software environment for which it was designed; and, (ii) is used in accordance with our documentation which we may provide you or publish on our website from time to time.

We do not warrant that the Products are error free, will operate in an uninterrupted manner, will not damage or interfere with your computer operating system and will not damage or interfere with your business or the business of third parties.

6.2. Virus Warranty. We represent and warrant that we will take reasonable commercial efforts to ensure that the Products, in the form and when provided to you, will be free of any viruses, malware, trojans or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and our sole obligation, is to fix or replace the Products promptly upon notice.

6.3. Remedies during Warranty Period. If, within the Warranty Period, a Product fails to perform as described due to a defect or fault (that is not the result of you having modified the Product without our prior knowledge or authorization or used it in contravention of the terms of this Agreement or outside its ordinary operating requirements), we will, at our sole option, repair or replace the Product, provided that you:

- (a) notify us in writing of the defect or fault in the Product within the Warranty Period; and
- (b) make available all the information that may be necessary to assist us in resolving the defect or fault, including sufficient information to enable us to recreate the defect or fault.

6.4. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 (GENERAL WARRANTIES) AND 6.2 (VIRUS WARRANTY), ALL SOFTWARE, CLOUD SERVICES SUPPORT AND MAINTENANCE AND ANY ADDITIONAL SERVICES ARE PROVIDED "AS IS," AND CLOUD CTRL AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. CLOUD CTRL WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CLOUD CTRL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER CLOUD CTRL NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY SOFTWARE OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY SOFTWARE OR CLOUD SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE CLOUD SERVICE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE CLOUD SERVICE (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE CLOUD SERVICE) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (D) ERRORS OR DEFECTS WILL BE CORRECTED; OR (E) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.2 (VIRUS WARRANTY), THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, IN WHICH CASE: (F) THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW; (G) YOUR ENTITLEMENT TO RELIEF IS LIMITED TO THOSE FORMS OF RELIEF REQUIRED BY STATUTE; AND (H) TO THE EXTENT PERMITTED BY LAW, THE FORM OF ANY RELIEF SHALL BE AT OUR DISCRETION.

7. Limitation of Liability

You agree that, to the maximum extent permitted by law, We and Our related entities, directors, officers and agents are not liable to You or anyone else for any loss or damage (including, without limitation, any direct, indirect, special or consequential loss) arising as a result of breach of these Terms, in tort (including negligence) or otherwise arising out of, or in connection, with: (a) the use of Our Websites; (b) Your reliance on anything contained in or omitted from Our Websites; (c) being unable to access Our Websites for whatever reason and however arising, including (without limitation) negligence; and/or (d) the failure of Our Websites for whatever reason and however arising including (without limitation) negligence.

You indemnify Us against any action, liability, claim, loss, damage, proceeding, expense (including legal costs) suffered or incurred by Us, arising from, or which is directly or indirectly, related to Your breach or non-observance of any of these Terms; and/or any breach, or alleged breach, of intellectual or other proprietary rights or interests of third parties.

7.2. Your Representations. You acknowledge and agree that:

- (a) the Products have not been developed to meet your individual requirements;
- (b) it is your responsibility to ensure that the facilities and functions of the Products meets your requirements;
- (c) you have made your own independent enquiries and have satisfied yourself of the nature and adequacy of our Products for the purpose for which you have obtained the Products.
- (d) the existence of any minor errors shall not constitute a breach of this Agreement; and
- (e) the provisions of Section 6 (*Warranty*), Section 7 (*Liability*) and Section 9 (*IP Indemnification*) are reasonable and reflected in the price, which would be much higher without those provisions, and you accept such risk.

7.3. Liability Cap. Except to the extent that any law or regulation provides otherwise, our maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence), or otherwise is limited to the **purchase price you paid for the Product**, and any renewal fees, received by Cloud Ctrl in the thirty days (30) prior to the event giving rise to the liability.

8. Restrictions on use of Websites and Services

In accessing or using Our Websites you agree that you will not:

- (a) use any automated device, software, process or means to access, retrieve, scrape, or index Our Websites or any content on Our Websites without Our express prior written consent;
- (b) use any device, software, process or means to interfere or attempt to interfere with the proper working of Our Websites;
- (c) undertake any action that will impose a burden or make excessive traffic demands on Our infrastructure that we deem, in Our sole discretion, to be unreasonable or disproportionate site usage;
- (d) use or index any content or data on Our Websites for purposes of competing with Us in any manner that we have not specifically authorised;
- (e) transmit spam, chain letters, contests, junk email, surveys, or other mass messaging, whether commercial in nature or not;
- (f) use Our Websites or any content from Our Websites in any manner which is, in Our sole discretion, not reasonable and / or not for the purpose it is made available;
- (g) violate the rights of any person, including copyright, trade secret, privacy right, or any other intellectual property or proprietary right;
- (h) pose as any person or entity or attempt to solicit money, passwords or personal information from any person;

- (i) act in violation of any Term or Condition of Use or other condition imposed by Us or any applicable law;
- (j) reproduce, republish, retransmit, modify, adapt, distribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit Our Websites or any content on Our Websites, except as expressly authorised by us; or
- (k) transmit or attempt to transmit any computer viruses, worms, defects, Trojan horses or other items of a destructive nature.

We reserve the right to exercise whatever means we deem necessary to prevent unauthorised access to or use of Our Websites, including, but not limited to, instituting technological barriers, or reporting your conduct to any person or entity.

10. Intellectual property and ownership of content

Unless indicated otherwise, all content and materials (in any format) on Our Websites and all intellectual property in Our Websites is owned or licensed by Us. Subject to these Terms, You agree that You will not infringe Our intellectual property as contained in Our Websites and will not modify, copy, republish, frame, distribute or communicate any part of Our Websites or any information contained in it without our express prior written consent or otherwise use Our Websites in a way which will infringe Our intellectual property or other rights.

We grant You permission to download Our copyright material only for private and non-commercial purposes. You may only reproduce or use Our copyright material for any other purpose with Our prior written consent, which may be given subject to such conditions as We, in Our absolute discretion, may impose.

All rights not expressly granted are expressly reserved.

11. Transfer of Rights and Obligations

You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including all Orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement (including liability for past performance). Any attempt by you to transfer or assign this Agreement except as expressly authorised above will be null and void.

We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our affiliates, agents and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement will inure to the parties' permitted successors and assigns.

12. Export

You represent and warrant that you are not in violation of and will not violate any export control laws, regulations or directives in the United States, Australia, the United Kingdom, or in your own country or region (if applicable) by entering into or in the performance of your rights or obligations under this Agreement.

13. Notices

Any notice under this Agreement must be given in writing.

We may provide notice to you via email. You agree that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Our notices to you will be deemed given upon the first business day after we send it.

You will provide notice to us by email or post:

Email: support@cloudctrl.com.au

SixPivot Pty Ltd, PO Box 180 New Farm QLD 4005

Your notices to us will be deemed given upon our receipt.

14. Severability

If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

15. Changes to this Agreement

Notice for changes. We may modify the terms and conditions of this Agreement from time to time, with notice given to you by email, through the cloud service or through our website. Together with notice, we will specify the effective date of the modifications.

15. Entire Agreement

This Agreement constitutes the whole of the agreement between the parties. You agree that you have not relied on any statement, representation, assurance or warranty made by any person (including a third party) in entering into this Agreement. This Agreement supersedes all prior or contemporaneous oral or written communications, proposals and representations between you and Cloud Ctrl with respect to the Products or any other subject matter covered by this Agreement.

16. Force Majeure

Neither party is responsible or liable for any omission or delay under this Agreement where the omission or delay is caused by an event beyond the reasonable control of any party, including, but not limited to, act of God, natural disaster, war or invasion, terrorism or act of a public enemy, strikes and industrial disputes, embargo, prohibition, confiscation, act of government authority, or failure of telecommunications or data networks or services.

17. Law and Jurisdiction

These Terms, and any agreement of which they form part, are governed by the laws of Queensland, Australia.