

License Agreement

Fellowmind - 2022

Versionsnummer 1.0

Fellowmind



Fellowmind License Agreement

Fellowmind Business Applications B.V. a company incorporated and existing under the laws of the Netherlands (hereinafter: "**Fellowmind**"), hereby grants to **Customer** a license to use the downloaded Software under the following conditions. Capitalized terms used in this License Agreement have the meaning assigned to them in Article 11.

Article 1: GRANT OF LICENSE

- 1.1 Subject to payment of the applicable fees, Fellowmind hereby grants to Customer a non-exclusive and non-transferable License to use the Software in accordance with the terms and conditions stated in this License Agreement. Fellowmind reserves all right, title and interest in and to the Software under all applicable laws and jurisdictions.
- 1.2 In case the Customer purchases a 'trial version'-License, this License will be free of charge, but in any case subject to the terms and conditions of this License Agreement.

Article 2: LICENSE CONDITIONS

- 2.1 The Customer may only use the Software in its own company or organisation for the number of Licenses purchased and as set out in the Offer.
- 2.2 During the term of the License Agreement, the Customer is entitled to raise the number of Licenses or licensed users. The applicable license fee will be raised accordingly and the new license fee will be invoiced starting from the following month. The Customer is allowed to decrease the number of Licenses or licensed users at the renewal date of the Agreement.
- 2.3 Fellowmind will monitor the use by Customer and is entitled to invoice Customer additional license fees in the event the number of users does not equal the registered licenses.
- 2.4 The Customer may not distribute, sell, copy, transfer or in any other way lose control over the Software, unless expressly allowed by law.
- 2.5 Customer is not entitled to make any changes to the Software or parts thereof, unless the Software itself provides the functionality to do so (i.e. making/changing forms, views and or data model). Customer is under no circumstance allowed to reverse engineer or decompile the Software or parts thereof, except for those circumstances that are allowed under mandatory copyright law and under the condition that Customer has obtained prior written approval of Fellowmind to do so. Fellowmind is entitled to attach conditions to such approval.
- 2.6 The Customer will only use the Software for lawful purposes and in accordance with Applicable Law.
- 2.7 The Software is provided to the Customer via third parties including the Microsoft cloud platform; it is located on Microsoft Windows servers that are located in Microsoft data centers. Any Microsoft conditions that apply to such services and any other third party conditions that apply to services and/or software connected to the Software will directly apply to the use of the Software by the Customer.

Article 3: SOFTWARE ASSURANCE

- 3.1 Subject to full and consecutive payment of the applicable fees (being (i) either the Subscription License fee or (ii) the one time Perpetual License fee and periodic maintenance fee) Customer is entitled to Software Assurance.



- 3.2 In the event the Parties have not agreed upon a Subscription License fee or upon the optional maintenance fee in connection with a Perpetual License, CMR Partners will not provide Software Assurance and – consequently not be required to correct any Errors in the Software or replace the Software under any circumstances, unless such Error/situation would constitute a violation of warranty as described in article 8.
- 3.3 Under Software Assurance Fellowmind will (a) try to correct Errors and or any other malfunction of the Software to the best of its ability by providing Updates, and (b) may – at its own discretion – develop Upgrades. Software Assurance does not include the deployment, configuration or implementation of any Updates or Upgrades. In the event Fellowmind is asked to perform such activities, it is entitled to charge an (additional) fee at its then current rates.
- 3.4 Furthermore, Software Assurance will in any event exclusively be provided to the latest (current) version of the Software. This means that if the Software version is directly related to a specific version of third party software (for instance Microsoft Dynamics 365 version 8), Software Assurance will be provided to the latest version of the Software that corresponds to that version of the third party software used by the Customer.
- 3.5 In the event the Software relies on third party software (including Microsoft Dynamics 365) Fellowmind shall cease Software Assurance regarding its Software when such third party software is not supported by the relevant supplier any more. Fellowmind will inform Customer as soon as possible when it learns that such supplier will cease such support. In the event the Customer has agreed upon extended support with such third party supplier, Fellowmind is not obliged to continue the Software Assurance services unless the Customer and Fellowmind have agreed upon otherwise.

Article 4: PRICE AND PAYMENT

- 4.1 In return for the License(s) and Software Assurance the Customer is obliged to pay the applicable fees to Fellowmind as specified in the Offer or – in the absence of an offer – the fees specified in the Store and/or on the Website. In the event the prices differ in the Offer, Store or on the Website, the prices in the Offer will prevail, followed by the Store and the Website. All prices mentioned are exclusive of turnover tax (VAT) and other levies imposed by the government.
- 4.2 Customer shall pay any fee to Fellowmind within 14 days after the first of the date of invoice, except when otherwise agreed upon in writing.
- 4.3 All amounts due under this License Agreement may not be withheld or offset by Customer against amounts owed by Fellowmind or Reseller to Customer for any reason. All fees payable to Fellowmind or Reseller hereunder are non-refundable unless otherwise agreed to in writing between the parties.

Article 5: INTELLECTUAL PROPERTY AND INDEMNIFICATION

- 5.1 All intellectual property rights to the Software and Documentation are held solely by Fellowmind, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in this License Agreement and subject to the terms and conditions as stated in this License Agreement.
- 5.2 The Customer shall not be allowed to remove or modify any designation concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the Software or Documentation. The Customer is not allowed to remove or evade technical measures to protect the Software or with a view to agreed restrictions regarding the License.
- 5.3 When it has been established in court as an incontrovertible fact that the Software, Documentation or other materials developed by Fellowmind and provided to Customer infringe any intellectual property right held by a third party, Fellowmind shall – at its sole discretion – (a) change the Software to the extent that it does not



infringe such third party rights, (b) provide different software to with similar functionality that does not infringe such third party rights, (c) at its expense acquire a license from such third party in order for the Customer to continue using the Software, (d) or provide any other reasonable solution to Customer. Any further liability of Fellowmind with respect to infringement of third party rights is excluded.

Article 6: TERM, TERMINATION AND CONSEQUENCES OF TERMINATION

- 6.1 This License Agreement is entered into starting from the date the Customer downloads, activates and/or first uses the Software. The term of the License is equal to the term indicated in the Offer; if no such term is indicated, this License Agreement is entered into for a one (1) year period for a Subscription License and for a three (3) years period for a Perpetual License.
- 6.2 Upon expiration this License Agreement will automatically be renewed each time for a one (1) year period, unless the agreement is terminated by written notice by either party (which also includes e-mail). In this respect the Customer will take into account a notice period of a minimum of one (1) month prior to the expiration date. Fellowmind will take into account a notice period of three (3) months prior to the expiration date.
- 6.3 In case the Customer purchases a 'trial version'-License, this License will expire 30 days after the first day of use of the License. At the termination of this 'trial version'-License, there will be no obligation to purchase and/or to grant an (actual) License to the Customer.
- 6.4 Notwithstanding any provision under Dutch law, Fellowmind is allowed to terminate this Agreement with immediate effect in writing in the event: (a) Customer becomes bankrupt or insolvent and/or if the business of Customer is placed in the hands of a receiver, assignee or trustee, whether by voluntary act of Customer or otherwise; or (b) Customer enters into liquidation or shall enter into an arrangement or composition with its creditors; or (c) Customer fails to perform its obligations under this agreement.
- 6.5 Fellowmind may adjust prices, availability levels, or other terms and conditions in order to meet its fiduciary and operational obligations when any term is being renewed.
- 6.6 Upon termination - on whatever grounds and for whatever cause - all rights granted to Customer under this License Agreement will expire automatically and – in the event of local installation - Customer will be obliged to remove or destroy the Software and Documentation from its system(s). All fees paid by the (previous) Customer remain due and payable.
- 6.7 Furthermore, upon termination of this License Agreement Fellowmind will (a) return Customer's data (including personal data) in a generally accepted file format or (b) - if so instructed by the Customer - the erasure of the data concerned. Unless agreed upon otherwise, Fellowmind will not have any further obligations such as but not limited to migration or conversion of data.

Article 7: LIABILITY

- 7.1 Notwithstanding other (legal) conditions concerning Fellowminds liability, Fellowminds total liability for failing to perform its obligations under this License Agreement shall be limited to compensating direct damage, up to at most the license fee(s) paid by Customer for the License(s) (exclusive of VAT). Direct damage solely entails:
 - a) reasonable expenses which the Customer would have to incur to make Fellowminds performance conform to the Agreement. This alternative damage shall not be compensated, however, if the Agreement is rescinded by the Customer;
 - b) reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of this License Agreement.



- 7.2 Fellowminds liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data and all other forms of damage or injury not mentioned in the preceding paragraph, is excluded.
- 7.3 For any right to damages to exist, the Customer must always report the damage or injury to Fellowmind in writing as soon as possible after it occurs. Any claim for damages shall be extinguished by the mere lapse of twelve (12) months after the claim arises.

Article 8: WARRANTY

- 8.1 Fellowmind warrants that during the term of this License Agreement the Software will materially conform to the Documentation.
- 8.2 Notwithstanding article 9.1, the Software, including Updates and Upgrades, are provided to Customer "as is". Fellowmind does not warrant that the Software, including Updates and Upgrades, shall operate without interruption, will be error-free or that it is fit for any particular purpose, or that Errors or other defects shall be corrected in Updates and/or Upgrades.

Article 9: MISCELLANEOUS

- 9.1 If any provision of the License Agreement shall be found to be invalid or unenforceable by any court or administrative body of competent jurisdiction, the invalidity or unenforceability of such provision shall not effect the other provisions of the License Agreement and all provisions not effected by such invalidity or unenforceability shall remain in full force and effect.
- 9.2 The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 9.3 This License Agreement constitutes the entire agreement between the parties. Additions or changes to this License Agreement shall only be binding on the parties if they have been agreed upon in writing by a separate (new) agreement.
- 9.4 Customer shall not assign or purport to assign or transfer any of its rights or obligations under this License Agreement, without prior written consent of Fellowmind. Fellowmind is entitled to assign or purport to assign or transfer its rights and obligations under this License Agreement to any third party. Customer agrees (now for then) to such assignment or transfer by Fellowmind and will provide all necessary cooperation to Fellowmind with respect thereto.
- 9.5 Fellowmind is entitled to and shall process non-personal data concerning the use of the Software, exclusively for the purpose to assess software license compliance, to improve the Software and to decide about future development of the Software. The non-personal data being processed may consist of: the versions of the Software being used; the number of users of the Software; the GUIDs of these users; how the Software is being used; and Errors that occur.

Article 10: APPLICABLE LAW AND JURISDICTION

- 10.1 This License Agreement is governed exclusively by the laws of the Netherlands. The Vienna Sales Convention of 1980 does not apply.
- 10.2 Any dispute between the parties arising from this License Agreement or in connection with further agreements that might result therefrom shall be resolved by the competent court in Arnhem, the Netherlands.

**Article 11: DEFINITIONS**

- 11.1 Applicable Law: all applicable laws, orders, regulations and other acts of all governmental authorities, foreign or domestic, having jurisdiction over this License Agreement or the activities thereunder
- 11.2 Customer: the customer of Fellowmind or of its Reseller that downloads the Software or on whose behalf the Software is downloaded, including its Users.
- 11.3 Documentation: the user documentation regarding the Software as provided by Fellowmind.
- 11.4 Error: the situation where the Software does not conform to the Documentation.
- 11.5 Intellectual Property Rights: all rights of intellectual property, such as but not limited to copyrights, database rights, trademark rights, know-how, patent rights.
- 11.6 License(s): the right provided to Customer by Fellowmind to install, load, run and use the Software for the amount of Users as purchased by the Customer, subject to the terms and conditions stated in the License Agreement.
- 11.7 License Agreement: this license agreement.
- 11.8 Offer: the specific offer of Fellowmind to the Customer in which (inter alia) the prices are laid down for the License.
- 11.9 Perpetual License: a License on the basis a one-time payment for the use of the Software and – an optional - subsequent yearly payable maintenance fees which provides the right to Software Assurance.
- 11.10 Software Assurance: correcting Errors in the latest version of the Software regarding the same software platform, e.g. by providing Updates and/or Upgrades.
- 11.11 Software: the software developed by Fellowmind, including the Documentation and all Updates and/or Upgrades of the Software, to which this License Agreement applies.
- 11.12 Store: the online platform operated by third parties, enabling the Software to be downloaded and purchased, including at least the Microsoft AppSource Store.
- 11.13 Subscription License: a License based on a monthly payable license and maintenance fee on the basis of which the Customer is allowed to use the Software and the right for Software Assurance.
- 11.14 Update: an improved version of the Software (for example version 0.1 to 0.2) in which a possible Error has been resolved.
- 11.15 Upgrade: a new version of the Software, which contains a change in functionality or new functions (for example version 1.0 to 2.0) of the Software.
- 11.16 User: an end user of the Software, an individual employed at the Customer.
- 11.17 Website: the Fellowmind website that mentions all prices and other characteristics concerning the Software.