



Software Licence Agreement & End User Licence Agreement

Welcome to Omnata! We are bringing data analytics and integration into the cloud era.

You are accessing this Software through the Salesforce App Exchange under the AppExchange User Agreement. That agreement contemplates entering into terms and conditions with other companies who provide applications through the App Exchange. This agreement is the terms and conditions contemplated by the App Exchange.

This agreement includes the Checkout Details, the Terms and Conditions and the EULA. This agreement sets out the terms on which we provide you with the Software described in the Checkout Details in exchange for the Fees set out in the Checkout Details.

By ticking the box to accept this agreement, you agree to be bound by this agreement as a binding contract between you, the Licensee, and us, Omnata.

Capitalised words and phrases used in this agreement have the meaning given in the Checkout Details or in clause 1 of the terms and conditions. In the event of any inconsistency between these terms and conditions and the Checkout Details or the EULA, these terms and conditions will prevail to the extent of the inconsistency.

TERMS AND CONDITIONS

1. DEFINITIONS

In this agreement, capitalised terms have the meaning given to them in the Checkout Details, and the following phrases have the meaning set out below.

Term	Definition
Checkout Details	means the information displayed on screen around the time of downloading the Software, including any information described in these terms as being set out in the Checkout Details.
Confidential Information	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
Documentation	means all manuals, help files and other documents supplied by Omnata to the Licensee relating to the Software, whether in electronic or hardcopy form.
End User	means a user who has been validly granted access to the Software and Documentation by the Licensee in accordance with clause 4.2.

Fees	has the meaning given in clause 6.2(a) and includes the Setup Fee and Annual Fee set out in the Checkout Details.
Intellectual Property Rights	any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, Confidential Information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of this agreement, whether registered or unregistered.
Licensee Data	means files, data or any other information, which is uploaded or inserted to the Software by the Licensee or its End Users.
Licensee	means the entity who enters into this agreement as named in the Checkout Details.
Modern Slavery	has the same meaning as it has in the Modern Slavery Act 2018 (Cth).
Omnata	means Omnata Pty Ltd ACN 630 777 178.
Salesforce	means the entity you contract with for access to the Salesforce platform (if applicable).
Services	means Omnata's provision of the Software and any related activities Omnata may perform for the Licensee under this agreement.
Snowflake	means the entity you contract with for access to the Snowflake cloud data warehouse (if applicable).
Software	means the software program described in the Checkout Details owned and developed by Omnata and licensed to the Licensee under this agreement.
Term	means the duration of this agreement as described in clause 2(a).
Third Party Services	has the meaning given in clause 5(a)(i).

2. TERM OF AGREEMENT

- (a) This agreement commences on the date displayed in the Checkout Details and continues in effect for period set out in the Checkout Details, unless earlier terminated in accordance with clause 12 or extended in accordance with clause 2(b) (**Term**).
- (b) The parties may agree to extend this agreement by mutual agreement, including by conduct that indicates an intention to extend the Term. If any Services are supplied after the expiry of the Term without the parties having entered into a replacement agreement or otherwise having expressly agreed in writing that these terms will not apply, the terms of this agreement will continue to apply for those Services.

3. THE SOFTWARE

3.1 SCOPE OF LICENCE

- (a) Omnata will provide the Software in accordance with the details provided in the Checkout Details, limited to access by the number of End Users set out in the Checkout Details.
- (b) During the Term, Omnata grants to the Licensee a non-exclusive, non-transferable, revocable, royalty-free, worldwide licence to use the Software and Documentation.
- (c) If additional End Users require access to the Software, the Licensee must notify Omnata of the number of additional End Users required and Omnata will invoice the Licensee for pro rata additional Fees in each subsequent billing period.

3.2 INSTALLATION, INTEGRATION & ENHANCEMENTS

- (a) The Licensee is responsible for properly installing the Software in order for the Licensee to enjoy the full benefit of the Software. Omnata is available to help with troubleshooting installation queries. However, Omnata is not responsible for performing installation.
- (b) The Services are dependent on the Licensee maintaining third party accounts, programs or systems that are required to operate the Software, such as the Snowflake data warehouse and the Salesforce CRM. Failure on behalf of the Licensee to maintain those accounts may delay performance of the Software and Omnata accepts no responsibility for any losses or notification in this regard.
- (c) Omnata makes no guarantee that any integration will be successful. Any failure of an integration, whether caused or contributed to by Omnata or a third party, will not be the responsibility of Omnata or a breach of this agreement. The Licensee releases Omnata from any claims for losses arising in connection with the failure of any third party integration.
- (d) Omnata may, from time to time, and without being under any obligation to do so, offer enhancements to the Software or issue updates to the Documentation. The Licensee must take all steps as instructed by Omnata to install any enhancements provided.

3.3 SUPPORT

- (a) Unless a separate service level agreement for support services is agreed between the parties, Omnata will use its best endeavours to provide a reasonable level of support to the Licensee in relation to any issues with the Software that are not caused by Third Party Services.
- (b) Support is available during business hours and response and resolution timeframes will be subject to availability of Omnata personnel and the severity of the issue.
- (c) If Omnata determines that an issue with the Software has been caused by Third Party Services, the Licensee will be directed to resolve the issue with the provider of those Third Party Services.

4. LICENSEE'S OBLIGATIONS

4.1 INTENDED USE CASE

- (a) The Licensee is responsible for ensuring that any intended use cases for the Software are possible and appropriate within any infrastructure, access and subscription restrictions of other platforms such as Salesforce.
- (b) Omnata will not be held responsible where the Licensee is unable to achieve an intended use case.
- (c) If the Licensee finds that an intended use case is not possible, the Licensee may terminate this agreement in accordance with clause 12.1.

4.2 END USERS AND EULA

- (a) The Licensee must ensure that all Users are made aware of, agree to and comply with the End User Licence Agreement in Schedule 1 and available at <https://omnata.com/eula.pdf> prior to accessing the Software.
- (b) The Licensee acknowledges and agrees that the Licensee is responsible for all acts or omissions of End Users.
- (c) The Licensee acknowledges and agrees that Omnata will have no liability for any act of a User for damage, loss or expense suffered by a User in connection with the use of the Software, and the Licensee indemnifies Omnata for any such damage, loss or expense.

4.3 INTERACTION WITH SOFTWARE

The Licensee must not, and must not encourage or permit any End User or any third party to, without Omnata's prior written approval:

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- (a) make copies of the Documentation or the Software;
 - (b) adapt, modify or tamper with the Software;
 - (c) remove or alter any copyright, trade mark or other notice on or forming part of the Software or Documentation;
 - (d) create derivative works from or translate the Software or Documentation;
 - (e) publish or otherwise communicate the Software or Documentation to the public, including by making it available online or sharing it with third parties;
 - (f) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software or Documentation to any third party;
 - (g) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
 - (h) attempt to circumvent any technological protection mechanism or other security feature of the Software; or
 - (i) permit any person other than End Users to use or access the Software or Documentation.

5. THIRD PARTY TERMS & CONDITIONS

- (a) The Licensee acknowledges and agrees that the Services are:
 - (i) reliant on third party providers and platforms, including integrated third party software (**Third Party Services**); and
 - (ii) subject to third party terms & conditions apply to the Services (**Third Party Terms**).
- (b) The Licensee must comply with, and must keep Omnata informed of, any Third Party Terms, including any amendments to Third Party Terms during the Term, that are applicable to the Services.
- (c) Omnata will not be liable for any delay, loss or damage, including any data loss or consequential loss arising from any error of data or transmission, suffered by the Licensee in connection with any Third Party Services or Third Party Terms. All liability of Omnata is excluded and limited in accordance with clause 11.

6. PAYMENT

6.1 FREE TRIAL

- (a) If the Checkout Details state that a free trial period applies, then no Fees are payable until the end of the free trial period.
- (b) However, unless the Licensee provides written notice to Omnata that the Licensee does not want to continue with the Software more than 30 days' prior to the expiry of the free trial period, the Licensee will be required to pay the Fees set out in the Checkout Details on and from the end of the free trial period.

6.2 PAYMENT OF FEES

- (a) The Licensee must pay the amounts set out in the Checkout Details and at the times set out in the Checkout Details or otherwise specified in an invoice (**Fees**).
- (b) The Checkout Details will specify whether the Fees are to be paid to directly to the Licensee or to a third party, for example to Salesforce. A direction to pay the Fees to a third party who will reimburse Omnata will be deemed to be payment of the Fees for the purpose of this agreement.
- (c) All Fees must be paid in advance and are non-refundable for change of mind.

6.3 TAXES

Unless otherwise indicated, the Fees are not stated as inclusive of any Australian or international taxes that may from time to time be or become applicable to the Services, including Goods & Services Tax and customs and import taxes. In relation to any taxes payable for goods or services provided by Omnata, the Licensee must pay those taxes subject to Omnata providing a tax invoice based on jurisdictional requirements.

6.4 CARD SURCHARGES

Omnata reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

6.5 INCREASE IN FEES

- (a) Omnata reserves the right to increase the Fees on each anniversary of the date this agreement is agreed, upon giving to the Licensee at least 30 days' written notice prior to the date the increase is to take effect. An increase on Fees may be made for various reasons, including to account for the then current Consumer Price Index as most recently published by the Australian Bureau of Statistics at the time.
- (b) In the event that the Licensee does not agree to the increased Fees, the Licensee must give Omnata written notice within 14 days of the notice. If the parties cannot agree on an increase to the Fees, the Licensee may terminate this agreement in accordance with clause 12.1.
- (c) In the event that the Licensee accepts the increase or does not respond within the 14 day notice period, the Licensee will be deemed to have accepted the increase to the Fees.

6.6 TRAINING FEES

- (a) From time to time, the Licensee may request that Omnata provide training for its personnel in relation to the Software, or other matters, in exchange for additional training fees as quoted by Omnata at the time.
- (b) Each request will be considered separately and may be accepted or denied at the sole discretion of Omnata. Omnata is under no obligation to agree to provide any training.

7. INTELLECTUAL PROPERTY

7.1 LICENCE TO LICENSEE DATA

- (a) The Licensee retains ownership of all Licensee Data.
- (b) The Licensee grants to Omnata a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Licensee Data to the extent reasonably required to provide the Software.
- (c) The Licensee warrants that Omnata's use of the Licensee Data will not infringe any third-party Intellectual Property Rights and indemnifies Omnata from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

7.2 SERVICE PROVIDER IP

- (a) Nothing in this agreement transfers any Intellectual Property Rights in any Omnata IP to the Licensee, including in the Software. Any Developed IP will be solely and exclusively owned by Omnata.
- (b) Omnata grants to the Licensee a non-exclusive, royalty free, non-transferable, worldwide and revocable licence to use Omnata IP and any Developed IP to the extent required for the Licensee to use the Software.

7.3 DEFINITIONS

For the purposes of this clause 7:

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- (a) **"Licensee Data"** means any documents or materials supplied by the Licensee to Omnata under or in connection with this agreement, or uploaded by the Licensee to the Software, including any Intellectual Property Rights attaching to those materials.
 - (b) **"Developed IP"** means any materials produced by Omnata in the course of this agreement, including reports, data, designs, concepts, know-how, information, advice, opinions, emails, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Licensee or others, and any Intellectual Property Rights attaching to those materials.
 - (c) **"Omnata IP"** means all materials owned or licensed by Omnata that is not Developed IP and any Intellectual Property Rights attaching to those materials, including the Software and Documentation.

8. MANAGEMENT OF INFORMATION AND DATA

8.1 PRIVACY

The Licensee agrees to Omnata's Privacy Policy, located on the homepage of Omnata's website, which is incorporated into this agreement by reference. Please read the Privacy Policy carefully as it governs Omnata's collection, use, and disclosure of personal information.

8.2 PROTECTION OF LICENSEE DATA

The Licensee retains ownership of all Licensee Data in accordance with clause 7.1(a). Omnata will:

- (a) not make any undocumented, unreported or unauthorised configuration changes to Omnata's systems or to the information security controls that secure Licensee Data, if those changes would materially decrease the protections afforded to Licensee Data; and
- (b) notify and keep the Licensee notified at all times of Omnata's current safety and security procedures and safeguards that are made from time to time.

8.3 SECURITY BREACH

- (a) The Licensee must promptly notify Omnata if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information (collectively, **Security Breaches**).
- (b) Omnata will, to the extent necessary and reasonable, assist the Licensee and its Personnel in connection with any investigation of a Security Breach to the extent the Security Breach relates to the Software.

9. BETA TESTERS

- (a) Omnata may look for beta testers to help test new features for the Software. These features will be described as "alpha", "beta" or "pre-release" features (or similar) (**Beta Services**). Beta Services may contain bugs, security flaws or other issues and they are made available on an 'as is' basis.
- (b) If the Licensee chooses to use Beta Services, the Licensee agrees that Omnata won't be responsible to the Licensee or any End User for any cost, loss, damages or expenses arising out of the Licensee using Beta Services. You also agree that any contractual commitments we make for our other Services will not apply to our Beta Services.

10. MODERN SLAVERY

If at any time Omnata becomes aware of Modern Slavery practices in the operations and supply chains used in its performance of this agreement, Omnata must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

11. WARRANTIES

11.1 OMNATA'S WARRANTIES

Omnata warrants that:

- (a) subject to clause 4.1, the Software will perform substantially in accordance with the intended purpose stated by Omnata on its website or in the Checkout Details; and
- (b) to its knowledge, the use of the Software in accordance with this agreement will not infringe the Intellectual Property Rights of any third party.

11.2 CORRECTION OF DEFECTS

- (a) Omnata will correct any errors, bugs or defects in the Software which arise during the Term and which are notified to Omnata by the Licensee unless the errors, bugs or defects:
 - (i) result from the interaction or integration of the Software with any Third Party Services; or
 - (ii) result from the misuse of the Software or the use of the Software by the Licensee other than in accordance with this agreement or the Documentation.
- (b) If any errors, bugs or defects arise that do not significantly impact the Software's advertised functionality, Omnata will use its best endeavours to correct those errors, bugs or defects.
- (c) The Licensee agrees to provide Omnata and its personnel reasonable access to the Licensee's IT system to assist Omnata in correcting any defects in the Software.

11.3 EXCLUSION OF OTHER WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010 (Cth)* (**ACL**). Under the ACL, the Licensee may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

12. LIABILITY

- (a) The Licensee is responsible for ensuring that any data which is fed to the Software through third party data warehouses, such as Snowflake or otherwise, is properly configured. The Licensee must make their own independent enquiries and assessments before making any material decisions based on the information or contextual data provided by the Software. Omnata does not accept responsibility for any loss or damage suffered by any party as a result of the Licensee relying on the Software to make decisions, and indemnifies Omnata for any such loss or damage.
- (b) Omnata does not accept responsibility for any unauthorised use, destruction, loss, damage or alteration to your data or information, your computer systems, mobile phones or other electronic devices arising in connection with use of the Licensed Materials.
- (c) The Licensee must take its own precautions to ensure that the processes which the Licensee employs for accessing the Licensed Materials does not expose the Licensee to

the risk of data loss, hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.

- (d) To the maximum extent permitted by applicable law, the maximum aggregate liability of Omnata to the Licensee in respect of loss or damage sustained by the Licensee under or in connection with this agreement is limited to the total fees paid to Omnata by the Licensee in the 3 months preceding the date of the first event giving rise to the relevant loss or damage.
- (e) The Licensee agrees at all times to indemnify and hold harmless Omnata and its officers, employees and agents ("**those indemnified**") from and against any loss (including reasonable legal costs) or liability incurred or suffered by any of those indemnified where such loss or liability was caused or contributed to by the Licensee or the Licensee's officers', employees' or agents':
 - (i) breach of any term of this agreement; or
 - (ii) negligent, fraudulent or criminal act or omission.
- (f) Omnata will not be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by Omnata, except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

13. TERMINATION

13.1 TERMINATION FOR CONVENIENCE :

- (a) The Licensee may terminate this agreement at any time without reason by providing 7 days' written notice to Omnata. The termination date is 7 days after the date of the notice, unless another later date is given in the termination notice.
- (b) Omnata may terminate this agreement at any time without reason by providing 90 days' written notice to the Licensee. The termination date is 90 days after the date of the notice, unless another later date is given in the termination notice.

13.2 TERMINATION FOR CAUSE

Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party is in breach of this agreement and either:

- (a) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
- (b) that breach is not capable of remedy.

The termination date is the date that the breach is determined to not be remedied either under clause 12.2(a) or clause 12.2(b).

13.3 EFFECT OF TERMINATION

- (a) During the termination notice period, the Licensee is responsible for ensuring that all Licensee Data is removed from the Software or will otherwise be accessible by the Licensee once the Licensee's instance of the Software is revoked on the applicable termination date.
- (b) If this agreement is terminated by the Licensee for convenience, or by Omnata for a breach committed by the Licensee, no Fees will be refunded and any amount owing for the then current billing cycle will be due and payable to Omnata. The remainder of the Fees for the Term will be waived.
- (c) If this agreement is terminated:
 - (i) by Omnata for convenience; or
 - (ii) by the Client for a breach committed by Omnata,

Omnata will provide a refund, or waive an amount payable, to the total of the Fees for the then current billing cycle.

- (d) Upon termination of this agreement by any method, each party must return to the other party or destroy all property and Confidential Information of the other party in its possession or control.

13.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

14. DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith.
- (d) If the dispute is not resolved within a period of 14 days after the date of the notice, a party may by notice to the other party or parties to the dispute refer the dispute for mediation by the Australian Disputes Centre (the **ADC**) in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to the ADC (**Guidelines**). The terms of the Guidelines are hereby deemed incorporated into this agreement.
- (e) If the dispute is not resolved within 28 days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.

15. NOTICES

- (a) A notice or other communication to a party under this agreement must be:
- (i) in writing and in English; and
- (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent; or
- (ii) when replied to by the other party,

whichever is earlier.

16. FORCE MAJEURE

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
- (i) reasonable details of the Force Majeure Event; and
- (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

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- (b) Subject to compliance with clause 15(a) the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
 - (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
 - (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of the Affected Party;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

17. GENERAL

17.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

17.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

17.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

17.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

17.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

17.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

17.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

17.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

17.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

17.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.



End User Licence Agreement

Key Terms

Term	Meaning
End User	means you, or any person to whom the Licensee provides the Licensed Materials and this EULA.
End User Licence	you are granted a revocable, worldwide, royalty-free licence to use the Licensed Materials for the purposes or participation in your employer's program using the Licensed Materials.
Head Agreement	means the agreement between Omnata and the Licensee in relation to the Licensed Materials.
Intellectual Property Rights	means all copyright, trade mark, design, patent, moral rights, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
Licensed Materials	means the Omnata platform.
Licensee	means the entity which has entered into the Head Agreement with Omnata in relation to the Software for the purpose of sublicensing the Software to the End User.

1. APPLICABILITY AND DEEMED ACCEPTANCE

- (a) This EULA applies to any End Users of the Licensed Materials. You agree to, and will be deemed to have accepted, this EULA when you access the Licensed Materials.
- (b) By accessing the Licensed Materials, you irrevocably consent to the terms of this EULA and represent and warrant that you will comply with the scope and restrictions of the End User Licence to the Licensed Materials provided under this EULA. If you do not accept this EULA, you must not access, use or otherwise view the Licensed Materials.
- (c) This EULA commences on the date the Licensed Materials are provided to you and will end when written notice is provided to you.

2. USE OF LICENSED MATERIALS

2.1 GRANT OF LICENCE

- (a) You are granted the End User Licence to use the Licensed Materials as set out in the Key Terms.
- (b) You must only use the Licenced Materials:
 - (i) in accordance with the limitations of the definitions in the Key Terms;
 - (ii) in a manner that is consistent and compliant with clause 2.1; and

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- (iii) in compliance with any other restrictions notified to you in writing by the Licensee or Omnata from time to time.

2.2 RESTRICTIONS ON LICENCE

You must not, without prior written approval from the Licensee or Omnata in their absolute discretion:

- (a) make copies of the documentation or the Licensed Materials;
- (b) provide the Licensed Materials to any third party;
- (c) adapt, modify or tamper in any way with the Licensed Materials, other than within the approved scope of use of the Licensed Materials;
- (d) remove or alter any copyright, trade mark or other notice on or forming part of the Licensed Materials or documentation;
- (e) create derivative works from or translate the Licensed Materials or documentation, other than for your own personal use only;
- (f) publish or otherwise communicate the Licensed Materials or documentation to the public, including by making it available online or sharing it with third parties;
- (g) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Licensed Materials or documentation to any third party;
- (h) decompile or reverse engineer the Licensed Materials or any part of it, or otherwise attempt to derive its source code;
- (i) attempt to circumvent any technological protection mechanism or other security feature of the Licensed Materials.

2.3 LIMITATIONS OF LICENSED MATERIALS

We do not guarantee, and make no warranties, to the extent permitted by law, that:

- (a) the Licensed Materials will be free from errors or defects;
- (b) the Licensed Materials will be accessible or available at all times; or
- (c) any information provided through the Licensed Materials is accurate or true.

3. DISCLAIMERS

- (a) The Licensee is responsible for ensuring that any data which is fed to the Software through third party data warehouses, such as Snowflake or otherwise, is properly configured. The Licensee must make their own independent enquiries and assessments before making any material decisions based on the information or contextual data provided by the Software. Omnata does not accept responsibility for any loss or damage suffered by any party as a result of the Licensee relying on the Software to make decisions, and the Licensee and the End User indemnify Omnata for any such loss or harm.
- (b) Omnata does not accept responsibility for any unauthorised use, destruction, loss, damage or alteration to your data or information, your computer systems, mobile phones or other electronic devices arising in connection with use of the Licensed Materials.
- (c) The Licensee must take its own precautions to ensure that the processes which the Licensee employs for accessing the Licensed Materials does not expose the Licensee to the risk of data loss, hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) To the maximum extent permitted by applicable law, we limit all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to the Licensed Materials to \$100 (AUD) in aggregate. This includes the loss of any data and the transmission of any computer virus.

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- (e) The End User indemnifies Omnata in respect of all liability for loss, damage or injury which may be suffered by any person arising from, or in connection with, the End User's use of the Licensed Materials or breach of this EULA (or both, as the case may be).
 - (f) The End User acknowledges and agrees that Omnata will have no liability for any act or omission by the End user which results in or contributes to damage, loss or expense suffered by the End User or Licensee in connection with the use of the Licensed Materials and indemnify Omnata for any such damage, loss or expense.
 - (g) All express or implied representations and warranties given by Omnata are, to the maximum extent permitted by applicable law, excluded. Where any law implies a condition, warranty or guarantee into this EULA which may not lawfully be excluded, then to the maximum extent permitted by applicable law, our liability for breach of that non-excludable condition, warranty or guarantee will, at our option, be limited to:
 - (i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
 - (ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.
 - (h) To the maximum extent permitted under applicable law, including the *Competition and Consumer Act 2010* (Cth), under no circumstances will Omnata be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with the Licensed Materials, this EULA or their subject matter.

4. TERMINATION

4.1 AUTOMATIC TERMINATION

This EULA will be automatically terminated, and your licence to the Licensed Materials will be immediately revoked, if the Head Agreement expires or is terminated.

4.2 TERMINATION BY OMNATA OR LICENSEE

Omnata or the Licensee (or both) may terminate this EULA immediately by notice to you (as an individual user, without terminating the Head Agreement) if:

- (a) you are in breach of any term of this agreement and you have failed to remedy the breach within 14 days after the notice; or
- (b) you commit, or Omnata or the Licensee reasonably suspects that you may commit, any breach of this agreement including, without limitation, clause 2.2.

4.3 EFFECT OF EXPIRY OR TERMINATION

- (a) In the event of expiry or termination of this EULA, you must:
 - (i) immediately cease using the Licensed Materials; and
 - (ii) remove the Licensed Materials from all materials in your care, custody or control that feature the Licensed Materials, and, if the Licensed Materials cannot be removed, then at Omnata's option, return or destroy all such material.
- (b) Termination of this agreement will not affect any rights accruing to either party to the date of termination nor any obligation performed to the date of termination or any obligation which expressly or impliedly survives termination of this EULA.

4.4 YOUR DATA ON TERMINATION

You are solely responsible for removing any information you store in the Licensed Materials prior to termination of this EULA. We will not be liable to you for any loss of your or any other user's data or information upon termination of this EULA.

5. **GENERAL**

5.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

5.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

5.3 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.

5.4 ASSIGNMENT

You can't assign, novate or otherwise transfer your rights or obligations under this agreement without our prior consent.

5.5 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.