

END USER LICENCE AGREEMENT

This end user licence agreement (referred to in this document as the “EULA”) is between you and Engage Australia. Your use of the Software is governed by the EULA. It is a legal agreement between you and Engage Australia.

In consideration for installing, downloading or using the Software, or authorising others to do so, you confirm acceptance of the EULA. If you are accepting these terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this EULA. You may not make any use of the Software unless you have accepted the EULA

Definitions

Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with Engage Australia or the End User (as the case may be). For purposes of this definition, “control” means the power to direct the management and policies of a party, directly or indirectly, whether through ownership of voting shares, by contract or otherwise; and the terms “controls” and “controlled” have corresponding meanings;

Documentation means information published by Engage Australia or a third party in any medium which may include product information, operating instructions and performance specifications relating to Software, which Engage Australia or any owner of Third Party Software (as the case may be) generally makes available to users of its products. Documentation does not include marketing materials;

Effective Date means the earlier of the date that the Software is downloaded/installed by you or the date upon which the Software is provided to you pursuant to a Services Agreement;

End User or **you** means any prospective user, on behalf of itself and the entity for whom it is installing, downloading or using the Software;

Hosted Environment means the technical environment required to operate and provide access to the relevant services;

Law means, with reference to any applicable jurisdiction, any statute, regulation, bylaw or a provision of a statute, regulation, or bylaw and includes, without limitation, any statutory rule, or ruling by a statutory body;

Order means an order for the provision of Software pursuant to a Services Agreement;

Personal Information has the meaning as defined in the Privacy Act (Cth) 1988, and references to the Privacy Act refer to that Act as amended from time to time;

Engage Australia means the Engage Australia Affiliate stipulated in the Services Agreement;

Engage Australia Software means the proprietary software owned and supplied by Engage Australia in connection with a Services Agreement between Engage Australia and the End User;

Services Agreement means any other written agreement that you enter into with Salmat in respect of the Software. This EULA will be deemed to be incorporated as part of the Services Agreement;

Shrinkwrap License means the terms and conditions of any license agreement such as a “shrinkwrap” or “clickthrough” license (whether with Salmat or any third party) accompanying or applicable to the Software;

Software means the computer programs in object code, originally provided by Engage Australia and ultimately utilised by you, whether as stand-alone products, pre-installed on hardware products or accessed as part of a software as a service solution, and may include Engage Australia Software and Third Party Software;

Third Party Components means such software programs or portions thereof included in the Software which contains software (including open source software) distributed under third party agreements;

Third Party Software means the proprietary software owned by a third party and supplied by Engage Australia in connection with a Services Agreement between Engage Australia and the End User;

Third Party Terms means the terms of the third party agreements under which Third Party Components are distributed.

1. Services. Engage Australia will make the Software available to you:

- (a) under this EULA; and
- (b) under any Services Agreement.

2. Scope. This EULA is applicable to anyone who downloads and/or installs or accesses and uses Software and Documentation included in services purchased from Engage Australia under a Services Agreement. Unless otherwise agreed to by Engage Australia in writing, Engage Australia does not grant any user rights whatsoever under section 3 of this EULA if the Software was obtained from anyone other than Engage Australia, and Engage Australia reserves the right to take legal action against you and anyone else using or selling the Software without a license.

3. User Rights and Restrictions. Engage Australia grants you (and where agreed in a Services Agreement, your Affiliates) a personal, non-assignable, non-exclusive, non-sublicensable right to use Software and Documentation from the Effective Date until terminated in accordance with the provisions of this EULA or the termination or expiry of the applicable Services Agreement, whichever event occurs first. This right is granted for the sole purpose of enabling you to enjoy the features of the Software in the manner contemplated in the Services Agreement and the Documentation and strictly for your direct beneficial business purposes. If you allow any person to operate, use, or access the Services (including any use by your Affiliates), you must ensure that such person complies with the terms of this EULA. You must not disclose any login ID's and passwords and you are responsible for unauthorised access to your login IDs and passwords. You must not allow the use of the same login ID simultaneously by two or more End Users.

- 4. Subscription Fees.** In some instances, the Software must be purchased as a subscription. The user rights granted under section 3 are subject to payment of the applicable subscription fees.
- 5. All Rights Reserved.** Except for the limited license rights expressly granted in this EULA, Engage Australia and each of its third party licensors reserve all of their respective rights (including all intellectual property rights) in and to the Software and Documentation and any modifications or copies thereto. You acknowledge that no intellectual property rights are granted to you in the EULA other than the usage rights for the Software that are expressly described in the Services Agreement.
- 6. General Restrictions.** To the extent permissible under applicable Law and except as expressly permitted in a Services Agreement, you agree not to:
 - (a) decompile, disassemble, reverse engineer or otherwise attempt to discern the source code of the Software;
 - (b) alter, modify, enhance or create any derivative works based on the Software or Documentation;
 - (c) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the Software or Documentation except as expressly authorised by your Services Agreement;
 - (d) copy any features, functions or graphics of the Software;
 - (e) permit any service provider or other third party, to use or access the Software except as permitted in this EULA or as specified in a Services Agreement;
 - (f) gain access to or the use of any Software or part thereof without authorisation from Salmat;
 - (g) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Salmat;
 - (h) permit or encourage any third party to do any of the acts described in paragraphs (a) to (g) above; or
 - (i) act in a manner that is otherwise inconsistent with the Intellectual Property Rights of Engage Australia or its licensors.
- 7. Warranty Disclaimer.** Except as required by Law, the Software is provided “as is” and none of Engage Australia or any of its third party licensors makes any express representations or warranties that the Software will operate uninterrupted or error free. To the maximum extent permitted by applicable Law, Engage Australia and its third party licensors disclaim all warranties implied or statutory, including but not limited to any warranties of merchantability, fitness for a particular purpose and non-infringement.
- 8. Compliance and audit.** Subject to reasonable notice, both Engage Australia and the suppliers of the Third Party Software will have the right to access and inspect End User’s systems and/or premises as reasonably required to audit the End User’s compliance with this EULA.
- 9. Termination.** If you breach this EULA and if within ten (10) business days of your receipt of a reasonably detailed written request to remedy, you have not remedied all breaches, Engage Australia may, with immediate effect, terminate the Software user rights granted under this EULA without prejudice to any available rights and remedies. Upon termination or expiration of the user rights for any

reason, you shall (where applicable) immediately return the Software and any copies to Engage Australia, or, at Engage Australia's discretion and following written notice to you by Engage Australia, you will permanently destroy all copies of the Software and any related materials in your possession or control. Inadvertent copies of the Software and any related materials remaining in the possession of the End User subsequent to termination or expiration of any user rights granted under this EULA shall not be implied or construed as constituting any agreement or consent by Engage Australia to transfer ownership of the Software and any related materials to the End User.

- 10. Refund or Payment upon Termination.** If a Services Agreement is terminated by you for cause, Salmat will refund any prepaid fees covering the remainder of the term of any Order after the effective date of termination. If this EULA is terminated by Engage Australia in accordance with the "Termination" section above or the Services Agreement is terminated by Engage Australia for cause, you will pay any unpaid fees covering the remainder of the term of any Order. In no event will termination relieve you of your obligation to pay any fees payable to Engage Australia for the period prior to the effective date of termination.
- 11. Third-party Components.** Certain software programs or portions thereof included in the Software may contain Third Party Components, which may have applying to them Third Party Terms which expand or limit rights to use certain portions of the Software. Information identifying the copyright holders of the Third Party Components and the Third Party Terms applying to them is available in the Documentation.
- 12. Limitation of Liability.** None of Engage Australia, any third party supplier to Engage Australia or the end user shall be liable under this EULA for (a) any incidental, special, indirect or consequential damages, (b) any loss of profits, revenue, bargain or data or any business interruption, or (c) direct damages in excess of the fees paid for the software during the twelve (12) months prior to the event giving rise to the claim for such damages, whether arising in contract, tort (including negligence), under product liability legislation, under any other statute or otherwise. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations or a breach of a party's intellectual property rights by the other party.
- 13. Protection of Confidential Software and Documentation.** End User acknowledges that:
- (a) all Software and Documentation constitute the confidential information of Engage Australia and its suppliers, and End User agrees at all times to protect and preserve the Software and Documentation in strict confidence, and not to disclose the Software and Documentation to any third party other than (a) as required by Law, or (b) with the written consent of Salmat.
 - (b) without limiting any other remedies available to Engage Australia under this EULA or a Services Agreement, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle Engage Australia to any available equitable remedy against you.

14. Protection of Personal Information. The use of the Software may require the processing of Personal Information pertaining to you or to your personnel. Personal Information required to use the Software will need to be submitted to Salmat, and may need to be submitted to Engage Australia's third party suppliers. If such information is not submitted, the End User will not be able to use the Software. Personal Information may also need to be transferred to or accessed from other jurisdictions in connection with the provision of the Software (and related services) and you hereby consent to the transfer of your personal information to a country outside of the country you reside in subject to appropriate confidentiality and security measures. Personal Information required by Engage Australia under this EULA will be handled in accordance with Engage Australia [Privacy Policy](http://www.engage-au.com), which is available at www.engage-au.com or upon request.

15. Export Compliance. You must comply with the export Laws and regulations of any relevant jurisdictions in using the Software. In particular:

- (a) you warrant that you are not named on any government list of persons or entities prohibited from receiving exports; and
- (b) you must not access or use the Software in violation of any export embargo, prohibition or restriction.

16. Third Party Hosted Environment. If you engage a third party to provide the Hosted Environment, you shall be responsible for such third party's compliance with this EULA. Further, such third party shall be restricted to hosting the relevant services on your behalf and may not use the Software for any other purpose.

17. Acknowledgement. End User acknowledges that certain Software may contain programming that: (i) restricts, limits and/or disables access to certain features, functionality or capacity of such Software subject to the End User making payment for licenses to such features, functionality or capacity; or (ii) periodically deletes or archives data generated by use of the Software and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time.

18. General

- (a) If any provision of this EULA is held to be unenforceable it will be read down so as to be enforceable or, if it cannot be read down, the provision (or where possible, the offending part) will be severed from the EULA without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of the EULA which will continue in effect.
- (b) To the extent there is a conflict between this EULA and any explicit term in a Services Agreement, the explicit term of the Services Agreement will prevail in respect of the conflict, except with respect to Third Party Components subject to a Shrinkwrap License or other Third Party Terms, in which case the Shrinkwrap License or other Third Party Terms will prevail over the Services Agreement and this EULA.

- (c) The End User may not assign or transfer its rights or obligations under the EULA without prior written consent of Engage Australia. Engage Australia may novate or assign its rights or obligations under the EULA without restriction.
- (d) The provisions of this EULA which are capable of having effect after termination of the EULA will remain in full force and effect following the termination of the EULA.
- (e) Salmat may update the EULA from time to time. You will remain governed by the EULA in effect on the Effective Date during the term of the Services Agreement. If the Services Agreement is renewed, the terms of the updated EULA will apply.
- (f) This EULA will be governed by the Laws of New South Wales, and the parties agree to submit to the exclusive jurisdiction of the courts of that State.
- (g) The EULA, together with the Services Agreement constitutes the entire agreement between the parties and supersedes all prior understandings and agreements concerning its subject matter.