

OPTIMATE INTEGRATOR FOR PI SYSTEM TO SPLUNK APP
IMPORTANT – READ CAREFULLY BEFORE DOWNLOADING,
INSTALLING OR USING THE
OPTIMATE INTEGRATOR FOR PI SYSTEM TO SPLUNK APP SOFTWARE
(“Software”)

This End-User Licence Agreement ("EULA") is a binding legal agreement between you (either an individual or a single entity) and Optimate Pty Ltd ACN 064 219 852 (“**Optimate**”), which sets out the terms and conditions under which you are licenced to use the Software that accompanies this EULA. An amendment or addendum to this EULA may accompany the Software.

BY CLICKING “I ACCEPT” OR BY INSTALLING, COPYING, OR USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE CAREFULLY READ AND UNDERSTOOD THIS EULA AND AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE WITH THE TERMS OF THE EULA, CLICK “I DO NOT ACCEPT” OR DO NOT INSTALL, COPY, OR USE THE SOFTWARE - YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND, IF APPLICABLE.

1. DEFINITIONS

- 1.1 “**Annual Licence**” means a licence to use the Software and to receive any Software Updates, Software Patches or Support Services for the period of one (1) year (as may be extended by you from time to time on payment of the applicable Licence Fees).
- 1.2 “**Additional Support Services**” shall have the meaning ascribed to it in the Schedule to this EULA.
- 1.3 “**Authorised User**” means the person approved by the purchasing Entity as the software user who is competent in the use of the software and may include at times, for the purposes of resolving issues on behalf of the software user, another person who is approved for software support by the purchasing Entity (e.g. help desk co-ordinator).
- 1.4 “**Documentation**” means any explanatory written materials that accompany or are provided in relation to the Software;
- 1.5 “**Intellectual Property Rights**” means the various rights and property conferred under statute, common law and equity in and in relation to patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets, Confidential Information and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967 and includes all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in this definition; and all rights of action in respect of the rights and property referred to in this definition.
- 1.6 “**Entity**” means the company defined as the recipient on the purchase order for the software.
- 1.7 “**Licence Fee**” means the amount applicable to the relevant Licence Option you selected (as varied by Optimate from time to time) payable by you to Optimate for your use of the Software and the provision of Support Services.

- 1.8 **"Licence Option"** means the licence type selected by you in relation to the Software, either an Annual Licence or Perpetual Licence.
- 1.9 **"Initial Perpetual Licence Support Term"** means the initial one (1) year period from the date of commencement of any Perpetual Licence;
- 1.10 **"Additional Perpetual Licence Support Term"** means each further consecutive annual period (commencing from the date of expiry of the Initial Term) during which you pay the Licence Fees applicable to the Perpetual Licence to extend the Ongoing Support Period;
- 1.11 **"Ongoing Support Period"** means:
- 1.11.1 the Initial Perpetual Licence Support Term; and
 - 1.11.2 any Additional Perpetual Licence Support Term.
- 1.12 **"Optimate"** means Optimate Pty Ltd ACN 064 219 852, an Australian corporation;
- 1.13 **"Perpetual Licence"** means a licence to use the Software that grants you:
- 1.13.1 a perpetual right to use the Software, (incorporating any Software Updates you receive prior to the expiry of the Ongoing Support Period), and any Software Patches in relation to the latest version of the Software you receive prior to the expiry of the Ongoing Support Period; and
 - 1.13.2 the right to receive Software Updates (including new releases of the Software) and Support Services only while the Perpetual Licence remains under an Ongoing Support Period.
- 1.14 Related Bodies Corporate has the meaning in the *Corporations Act 2001*.
- 1.15 **"Software"** means the OPTIMATE INTEGRATOR FOR PI SYSTEM TO SPLUNK APP software in object code format, made available to you together with this EULA, in addition to but not limited to any Documentation, Software Updates, Software Patches and Software Key.
- 1.16 **"Software Key"** means a file that stores the licence details for the Software that Optimate will provide to you to install on the computer on which the Software is installed.
- 1.17 **"Support Services"** means product support for the Software as set out in the Schedule to this EULA.
- 1.18 **"Software Patches"** means any updates or patches to the Software, which may be provided by Optimate from time to time in relation to a particular version of the Software.
- 1.19 **"Software Updates"** means any upgrades and new releases (if any) in relation to the Software, which may be provided by Optimate from time to time.
- 1.20 **"You", "you" or "your"** means the individual person, Authorised User or Entity (including the Entity's Related Bodies Corporate) agreeing to this EULA.

2. GRANT OF LICENCE

- 2.1 Provided that you comply with all of the terms and conditions of this EULA, Optimate grants you a limited, non-exclusive, non-transferable licence:

- 2.1.1 to download, install and run a copy of the Software on a single computer per Software Key provided;
- 2.1.2 to only use any Documentation for any purpose that is permitted by the EULA;
- 2.1.3 for a backup copy of the software for disaster recovery purposes only.

3. USE OF THE SOFTWARE

3.1 You are solely responsible:

- 3.1.1 For ensuring that you only use the Software for a lawful purpose and in accordance with any local or international laws, including any laws relating to the use of and protection of intellectual property;
- 3.1.2 For procuring at your own expense, any required computer equipment, telephone or internet connections and/or equipment, and any other goods or services required to allow for the operation of the Software;
- 3.1.3 For ensuring that only Authorised Users , access the Software;
- 3.1.4 For the misuse or failure to reasonable precautions in the use of the software;
- 3.1.5 For virus scanning the Software and protecting your system against attack or infection by viruses or other harmful material;
- 3.1.6 For implementing adequate back up procedures for all data used, generated or stored while using the Software;
- 3.1.7 For ensuring that any computer systems on which the Software is installed meets the minimum system requirements for its version.

3.2 You must not:

- 3.2.1 copy, reproduce, distribute, lend, lease, rent, sell, translate, adapt, vary, edit, customise or modify the Software without the express written consent of Optimate (except as expressly authorised herein);
- 3.2.2 disassemble, decompile or reverse engineer the whole or any part of the Software or any locking or security device used or supplied with the Software (including but not limited to the Software Key), except to the extent that such activity is expressly permitted by this EULA or applicable law;
- 3.2.3 licence, sublicense, sell, resell, transfer, assign, distribute, charge, mortgage, or otherwise commercially exploit or make available to any third party in any way, the Software or the licence provided to you in relation to the Software;
- 3.2.4 create Internet “links” to the Software or “frame” or “mirror” any content of the Software on any other server, wireless or Internet-based device, or otherwise make the Software available in any form to any person or system without the prior written consent of Optimate;
- 3.2.5 access the Software in order to:
 - 3.2.5.1 build a competitive product or service;

- 3.2.5.2 build a product using similar ideas, features, functions, capabilities, or graphics of the Software; or
- 3.2.5.3 copy any ideas, features, functions, or graphics of the Software;
- 3.2.5.4 assess the performance, functionality, availability or any other benchmarking or competitive purposes;
- 3.2.6 Allow the Software to be accessed or used except as expressly permitted by this EULA.

4. OWNERSHIP OF THE SOFTWARE

- 4.1 You acknowledge and agree that **you are only acquiring the right to use the Software – the Software is licenced to you, it is not sold to you.**
- 4.2 You acknowledge that the Software is subject to and protected by Intellectual Property Rights, including but not limited to copyright, and all modifications thereto, including derivative works based on the Software shall remain the property of Optimate (or its licensors, if any) and in no event will title in the Software pass to you. You agree that the Software and all copies (in whole or part) will remain the exclusive property of Optimate and may not be copied or used except as expressly authorised by this EULA.
- 4.3 Optimate reserves all rights not expressly granted to you in this EULA. This EULA does not grant you any rights to use any trademarks of Optimate.

5. PAYMENT OF FEES

- 5.1 You must provide Optimate with complete and accurate contact and billing information. You agree to advise Optimate of changes to any provided information within twenty eight (28) days of a change occurring.
- 5.2 If you request that Optimate provide you with any Additional Support Services, you agree to pay to Optimate the fee that is negotiated for the provision of those services.
- 5.3 The payment of any Licence Fees or fees for Additional Support Services to Optimate is non-refundable, even if you stop using the Software.
- 5.4 Optimate offers two types of licence for the Software (the “**Licence Options**”), an Annual Licence or a Perpetual Licence. Your licence to use the Software is subject to you paying the full amount of the Licence Fees in advance by the due date for payment.

Annual Licence

- 5.5 An Annual Licence is a licence where you pay Optimate a Licence Fee in return for a licence to use the Software and access the Support Services for a period of one (1) year (“**Initial Annual Licence Term**”) and any Additional Annual Licence Term, in accordance with the terms of this EULA.
- 5.6 The Annual Licence may be renewed by you for further one (1) year periods by paying to Optimate (in advance, at least 14 days prior to the expiry date of the

preceding term of the Licence) the Licence Fee attributable to any additional term (“**Additional Annual Licence Term**”).

- 5.7 You must immediately cease using the Software if you allow the Initial Annual Licence Term or any Additional Annual Licence Term to expire without renewing the Annual Licence.

Perpetual Licence

- 5.8 A Perpetual Licence is a licence where you pay Optimate a Licence Fee in return for a licence to:

5.8.1 use the Software for an unlimited period of time (in its last version provided to you during the Ongoing Support Period); and

5.8.2 receive any Software Patches (but excluding any Software Updates or new versions of the Software) in relation to the latest version of the Software that you receive prior to the expiry of the Ongoing Support Period;

5.8.3 access the Support Services for the Ongoing Support Period;

- 5.9 On expiry of the Ongoing Support Period, Optimate will cease to have any obligations to you under this EULA other than:

5.9.1 to not oppose your ongoing use of the Software in its last version provided to you during the Ongoing Support Period;

5.9.2 to provide you with any Software Patches (but excluding any Software Updates or new versions of the Software) in relation to the latest version of the Software that you receive prior to the expiry of the Ongoing Support Period.

- 5.10 For the avoidance of doubt, if you purchase a Perpetual Licence and you allow the Ongoing Support Period to expire (by not paying the Licence Fees), if at some future time you wish to regain access to the Support Services and Software Updates, you must either:

5.10.1 retrospectively pay to Optimate all Licence Fees that were not paid during the period between the expiry of the Ongoing Support Period and the date you reinstate the Ongoing Support Period (pro-rated if required), plus the Licence Fees for an additional one (1) year period; or

5.10.2 purchase a new Annual Licence or Perpetual Licence.

6. TERMINATION OR EXPIRATION OF LICENCE

- 6.1 This EULA will remain in force from the time you accept the terms of this EULA until:

6.1.1 In the case of an Annual Licence:

6.1.1.1 for the Initial Annual Licence Term;

6.1.1.2 for any Additional Annual Licence Term for which you pay the applicable Licence Fees;

- 6.1.2 In the case of a Perpetual Licence, for an unlimited period of time, with the exception that Optimate will cease to have any obligations to you under this EULA following the expiry of the Ongoing Support Period, other than those referred to in paragraph 5.9 of this EULA.
- 6.2 Without prejudice to any other rights, Optimate may terminate this EULA if you fail to comply with any material terms and conditions of this EULA but you will be given 15 business days to rectify the non-compliance before the termination right arises.
- 6.3 Upon termination or expiration of this EULA:
- 6.3.1 you must destroy all copies of the Software (including any Documentation) in your possession (and if requested by Optimate, provide evidence reasonably satisfactory to Optimate that this has occurred);
- 6.3.2 any rights you may have under this EULA will terminate; and
- 6.3.3 any amount or benefit which may have accrued or be accruing to either party shall survive this termination.
- 6.4 In the event that this EULA is terminated for any reason, you authorise Optimate to charge any provided credit card or other provided means of payment for any fees or amounts that remain unpaid.

7. LIMITED WARRANTY FOR SOFTWARE

- 7.1 The Software is designed and offered to you as general-purpose software only, and not to be used for any particular purpose. Optimate cannot guarantee that the Software is error free and you acknowledge that this may be the case.
- 7.2 Optimate warrants that the Software will perform substantially in accordance with the accompanying materials for a period of one hundred and eighty (180) days from the date you received the Software (regardless of whether or not the Software has been installed) or ninety (90) days from the date of installation of the software whichever comes first (“**Limited Warranty**”).
- 7.3 In the event that the Software does not comply with the Limited Warranty, you agree that your sole remedy will be for Optimate to either:
- 7.3.1 repair or replace the Software; or
- 7.3.2 refund to you the price you paid for the Software.
- 7.4 To claim a remedy under this EULA due to non-compliance with the Limited Warranty, you must return the Software to Optimate within the 90 day Limited Warranty period and provide supporting evidence (to the reasonable satisfaction of Optimate) to Optimate to demonstrate that the Software has failed to perform to the required standard.
- 7.5 If an implied warranty or condition is created by your jurisdiction and that warranty or condition cannot be excluded, you agree that any such warranty or condition is limited to any defects discovered during the period of this limited warranty (90 days). If any defects are discovered after this period, Optimate provides no warranty or condition of any kind.
- 7.6 This Limited Warranty is void if the failure of the Software to meet the required standard has resulted (either in whole or in part) due to accident, abuse, misapplication, abnormal or unauthorised use or a virus.

8. DISCLAIMER OF LIABILITY AND WARRANTIES.

- 8.1 Subject to the Limited Warranty above, to the maximum extent permitted by law, Optimate hereby disclaims all other warranties, representations and conditions, whether express, implied or statutory, including, but not limited to:
- 8.1.1 That the Software will run properly on any particular hardware;
 - 8.1.2 That the Software operates on all systems or in combination with other software that you may select for use;
 - 8.1.3 That the Software will meet your or any third party's requirements;
 - 8.1.4 That the operation of the Software will be uninterrupted or error free.
 - 8.1.5 Any (if any) implied warranties, duties or conditions of fitness for purpose, workmanship or workmanlike effort, lack of viruses, merchantability, reliability or availability, accuracy or completeness of responses, non-infringement, quiet enjoyment or quiet possession, correspondence to description, title, results, lack of negligence, and the provision of or failure to provide support or other services, information, software, and related content through the Software, otherwise arising out of the use of the Software or the providing of any Support Services or Additional Support Services.
- 8.2 You agree that your use of the Software is at your own sole risk, and Optimate do not and cannot warrant the results or performance in relation to your use of the Software.
- 8.3 Optimate shall not be liable for any loss resulting from the use of or your inability to use the Software, and/or any cost or losses sustained by you in:
- 8.3.1 Acquiring hardware or software to use the Software; or
 - 8.3.2 Acquiring substitute goods or services resulting from your use of or inability to use the Software for your intended purpose.
- 8.4 You acknowledge that the Software may contain bugs, errors and other problems that could cause system instability, crashes or failure.
- 8.5 You acknowledge that this EULA contains the entire agreement between you and Optimate and that you have relied on no information, representations, inducements, promises or agreements by Optimate or its employees, officers, agents or anyone on Optimate's behalf in deciding whether to agree to the terms of this EULA. Any terms, conditions, warranties, undertakings, inducements or representations, whether express or implied, or implied under statute, are hereby otherwise expressly excluded.

9. LIMITATION OF LIABILITY AND REMEDIES

- 9.1 Notwithstanding any other provision of this EULA, Optimate's maximum total liability to you pursuant to this EULA shall be limited to a refund of any Licence Fees paid to Optimate by you pursuant to this EULA in the twelve (12) month period prior to the date the liability arose. This limitation of liability does not apply to claims related to infringement of intellectual property rights.

- 9.2 Where any Act of Parliament implies any term, condition or warranty into this EULA that cannot be excluded, restricted or modified at all or only to a limited extent, the term, condition or warranty will apply, except to the extent it can be excluded. Your exclusive remedy for any breach of any such term, condition or warranty, including any liability under the Australian Consumer Law (if applicable) will be limited at Optimate's option, to any one or more of the following:
- 9.2.1 in the case of the Software:
 - 9.2.1.1 repairing or replacing the Software;
 - 9.2.1.2 payment of the cost of having the Software repaired or replaced;
 - 9.2.2 in the case of the Support Services or the Additional Support Services:
 - 9.2.2.1 the supplying of the Support Services or Additional Support Services again; or
 - 9.2.2.2 the payment of the cost of having the Support Services or Additional Support Services supplied again.
- 9.3 With the exception of any refund issued at the sole discretion of Optimate, Optimate is not liable for any indirect, incidental, consequential, special, punitive, or exemplary damages including but not limited to, damages for loss of profits, goodwill, use, data, other intangible or pure economic losses, the provision of or failure to provide support or other services, even in the event of the fault, tort (including negligence), misrepresentation, strict liability, breach of contract or breach of warranty of Optimate (even if Optimate has been advised of the possibility of such damages).
- 9.4 Each party will use its best efforts to mitigate any loss, cost, expense or damage which it incurs in connection with this EULA.
- 9.5 You indemnify Optimate and hold Optimate harmless for all claims and costs arising out of or relating to your use, modification, distribution or unauthorised use of the Software.

10. PRIVACY AND USE OF DATA

- 10.1 You agree that Optimate may collect and use information gathered as part of any Product Support provided to you. Optimate will only use this information to improve its products or the Software and will not disclose this information in a form that personally identifies you unless required by law.

11. SOFTWARE UPDATES AND PATCHES

- 11.1 This EULA applies to any and all Software Updates and Software Patches that Optimate may provide to you or make available to you after the date you obtain your initial copy of the Software.
- 11.2 Any Software Updates and Software Patches are not covered by any warranty or condition, express, implied or statutory except as covered by the limited warranty.

12. GENERAL

- 12.1 This EULA is governed by and is to be construed in accordance with the law applicable in Queensland, Australia or as defined in the attached schedule. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Queensland, Australia or as defined in the attached schedule and any courts which may hear appeals from those courts in respect of any proceedings in connection with this EULA.
- 12.2 If any part of this EULA is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.
- 12.3 Either party's failure to enforce any right or provisions in the EULA will not constitute a waiver of such or any other provision.
- 12.4 This EULA may only be varied if Optimate notifies you of changes to the EULA in accordance with the terms of the EULA and you agree to the changes in writing. You acknowledge that any notices that we send to you will become effective immediately on being sent, and that we may send notices to you by:
- 12.4.1 email message to any provided email address; and/or
 - 12.4.2 letter to any provided physical or postal address.
- 12.5 If the whole or any part of a provision of this EULA is or shall become void, unenforceable or illegal, the remainder of this EULA shall have full force and effect. The parties agree that in such a case, the provision held void, unenforceable or illegal shall be replaced by such provision that in its commercial and legal context is most similar to the provision held void, unenforceable or illegal.

Schedule

Governing State Laws: Queensland, Australia.

Support Services

The support services provided by Optimate include:

1. Software maintenance, including updates and patches.
2. Technical support for accredited users in relation to the Software.

Additional Support Services

The following are additional support services that you may request from Optimate at a fee that you negotiated with Optimate (“**Additional Support Fee**”):

1. User training for the Software.
2. Design and implementation services for customer projects.
3. Implementation support services for customer projects.