

**END USER LICENCE AGREEMENT – OMNIS STUDIO**

REV. JAN 2017

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**THANK YOU FOR CHOOSING THE ACCOMPANYING OMNIS® PRODUCT (TOGETHER WITH ITS ACCOMPANYING DOCUMENTATION, "OMNIS"). THIS LICENCE IS THE LEGAL AGREEMENT ("AGREEMENT") BETWEEN YOU, THE CUSTOMER WHO HAS ACQUIRED OMNIS ("YOU") AND OMNIS SOFTWARE LIMITED ("OMNIS SOFTWARE"). PLEASE READ THIS AGREEMENT CAREFULLY.**

**OMNIS SOFTWARE IS ONLY WILLING TO PROVIDE OMNIS TO YOU ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. YOU ACCEPT THIS AGREEMENT BY INSTALLING OR USING OMNIS.**

**IF YOU DID NOT ACQUIRE OMNIS FROM OMNIS SOFTWARE, OR AN AUTHORIZED OMNIS SOFTWARE DISTRIBUTOR OR AFFILIATE ("AUTHORIZED DISTRIBUTOR"), THEN YOU MAY NOT ENTER INTO THIS AGREEMENT OR USE OMNIS. NO OTHER PARTY HAS THE RIGHT TO TRANSFER A COPY OF OMNIS TO YOU. OMNIS SOFTWARE'S AUTHORIZED DISTRIBUTORS AND AFFILIATES ARE LISTED ON ITS WEB SITE.**

**IF YOU ARE UNWILLING TO ACCEPT THIS AGREEMENT, DO NOT USE OMNIS. IF YOU HAVE ALREADY PAID FOR OMNIS WITHOUT HAVING A PRIOR OPPORTUNITY TO REVIEW THIS AGREEMENT, AND ARE NOW UNWILLING TO AGREE TO THESE TERMS, YOU MAY, WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH YOU ACQUIRED OMNIS, RETURN IT TO OMNIS SOFTWARE, OR THE AUTHORIZED DISTRIBUTOR FROM WHOM YOU ACQUIRED IT, ALONG WITH ITS ORIGINAL PACKAGING AND PROOF-OF-PURCHASE, FOR A FULL REFUND.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, OMNIS SOFTWARE'S AUTHORIZED DISTRIBUTORS DO NOT ACT AS AGENTS OF OMNIS SOFTWARE, AND SUCH DISTRIBUTORS MAY NOT ENTER INTO ANY CONTRACTS ON BEHALF OF OMNIS SOFTWARE. NO AUTHORIZED DISTRIBUTOR HAS THE AUTHORITY TO MODIFY THE TERMS OF THIS AGREEMENT.**

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**A WORD TO OUR VALUED CUSTOMERS.** Our goal is to help you succeed using Omnis. We have crafted this Agreement to provide you the flexibility that you need to successfully develop and distribute products using Omnis, while at the same time protecting Omnis Software's intellectual property. If you need to use Omnis in a manner that is not permitted under this Agreement, please contact Omnis Software to discuss alternative licensing arrangements. If you have any questions or concerns about this Licence, please contact Omnis Software at [licence@omnis.net](mailto:licence@omnis.net).

**1. OWNERSHIP.** Omnis (exclusive of its physical packaging) is licenced. It is not sold, even if for convenience we make reference to words such as "sale" or "purchase." Omnis is protected by copyright and other intellectual property rights. You agree that all worldwide copyright and other intellectual property rights in Omnis and all copies of Omnis, however made, are the exclusive property of Omnis Software and its suppliers. All rights in Omnis not expressly granted to you in this Agreement are reserved by Omnis Software and its suppliers. There are no implied Licences under this Agreement.

**2. HOW OMNIS IS LICENCED.** Omnis is a tool that enables you to develop and deploy Applications. If you want to use Omnis to develop Applications, then you must purchase, from Omnis Software or its Authorized Distributor, one or more *development Licences* under Section 4. If you want to use Omnis to deploy Applications on a production or "runtime" basis, then you must purchase, from Omnis Software or its Authorized Distributor, one or more *deployment Licences* (also known as "runtimes") under Section 5. You may only acquire a deployment Licence for a particular version of Omnis if you have also acquired at least one development Licence for that same version. If you are a commercial developer, or you are otherwise developing applications for distribution to third parties, please see Section 6 for details on distributing deployment Licences to your customers. The term "Application" means a program that you create using Omnis that has substantial added value and functionality over Omnis, is not merely a set or subset of the functions provided by Omnis, and that does not directly expose the interfaces of Omnis to end users of the Application. Applications do not include programs that substantially duplicate the capabilities of or compete with Omnis.

**3. ACTIVATION CODES.** For each Licence granted to you under this Agreement, other than evaluation Licences, Omnis Software or its Authorized Distributor will provide you with a unique activation code for use by you or the end customer who ultimately uses your Application ("Customer") and, in some cases, a Licence certificate describing the Licence that you have acquired. The activation code, together with any accompanying Licence

certificate, is your proof-of-licence. Retain a copy for your records. To install or use a copy of Omnis, you or your Customer may be required to enter an authorized activation code. If you have acquired a Licence for distribution to a Customer, you must deliver the corresponding activation code, along with a copy of any accompanying Licence certificate, to that Customer. Once an activation code is used - either by you or your Customer - to install Omnis under a particular licence, it cannot be transferred to another party or used under a different licence. If a particular Licence granted under this Agreement is for a specified term, then the activation code issued under that Licence will expire - and the corresponding copy of Omnis will no longer continue to operate - upon expiration of the limited Licence term. **IN THAT CASE, YOU WILL NO LONGER BE ABLE TO ACCESS ANY DATA OR PROGRAMS THAT YOU HAVE CREATED USING THAT COPY OF OMNIS.** To continue using Omnis after such expiration, you will need to purchase a new Licence from Omnis Software, if available, at then-current prices and terms.

Each unique activation code permits you to operate Omnis either directly on one (1) Licenced Server (without virtualization or other emulation), or on one (1) virtual (or otherwise emulated) hardware system on one Licenced Server, unless otherwise indicated.

Activation associates the use of Omnis with a specific Licenced Server. During activation, Omnis may send information to Omnis Software containing the unique activation code, Internet protocol address and information derived from the hardware configuration of the Licenced Server. This information is used to validate that Omnis is being operated in accordance with this Agreement. **BY USING OMNIS, YOU CONSENT TO THE TRANSMISSION OF THIS INFORMATION.** Omnis Software will not collect any personally identifiable information from your device during this process.

**4. DEVELOPMENT LICENCES.** For each Development Licence that you purchase under this Agreement, Omnis Software grants you a personal, non-exclusive, non-transferable, limited Licence during the term of this Agreement to install and execute the accompanying version of Omnis, in object code format only on no more than five (5) Licenced Servers in your possession solely for use by you (if you are an individual) or by one (1) person in your employ (if you are an entity) to develop, test, support and maintain Applications, so long as you comply with this Agreement. You may not distribute, sub-licence, share or otherwise transfer Development Licences, and you may not use Omnis under this Section 4 to deploy an Application on a production basis.

**4.1 Serverless Development Licences.** Serverless Development Licences are specific to the development of mobile applications. As an extension of the Development Licence (as defined in section 4 above), you may purchase one or more Serverless Development Licences as long as you have a Development Licence. Each Serverless Development Licence permits you to develop one (1) serverless mobile application (with application defined as the use of one (1) Omnis library). Activating a Serverless Development Licence will permit setting the serverless client mode for remote forms in one (1) Omnis library for a single application. Each additional serverless mobile application will require the purchase of an additional Serverless Development Licence.

## 5. Deployment Licences

**5.1 Two Types of Deployment Licences.** You must purchase one or more Deployment Licences to run each Application that you create using Omnis. There are two types of Deployment Licences available under this Agreement, the Client Access Licence and the Web App Server Licence (also known as "Web Server Licence", "Web Client Licence", "Web Licence", "JavaScript Mobile App Server" or "JavaScript Web App Server"). These are described in Sections 5.3 through 5.6. The type of Deployment Licence that you purchase will be indicated on the applicable invoice or Licence certificate provided to you by Omnis Software or its Authorized Distributor. You may purchase a Client Access Licence on either a single-user or multi-user basis. If you purchase a multi-user Client Access Licence, then you must purchase Licence rights for each User (defined below) who uses or otherwise accesses an Application, whether directly or via remote access tools, regardless of how frequent that access may be. You may purchase a Web App Server Licence on either a per-concurrent-user basis or a per-System basis. If your Application requires a different deployment model, please contact Omnis Software or an Authorized Distributor in your territory to discuss alternative Licence arrangements.

**5.2 Why Are Deployment Licences Required?** Applications require the Omnis Runtime Environment to operate on a deployment basis. The "Runtime Environment" is a subset of Omnis that does not include functionality for creating or modifying Applications. Like the rest of Omnis, the Runtime Environment is proprietary to Omnis Software, and therefore it may not be installed or executed without a Deployment Licence.

**5.3 Client Access Licence - Single-User.** For each single-user Client Access Licence that you purchase under this Agreement, Omnis Software grants you a non-exclusive, non-transferable, limited Licence to install and execute the Runtime Environment, in object code format only, on one (1) single-user Licenced Server for use by one (1) User (defined below) with one (1) Application only, so long as you comply with this Agreement.

**5.4 Client Access Licence - Multi-User.** For each multi-user Client Access Licence that you purchase under this Agreement, Omnis Software grants you a non-exclusive, non-transferable, limited Licence to install and execute the Runtime Environment, in object code format only, for use with one (1) Application only on as many single-user Licenced Servers as the maximum number of Users authorized by Omnis Software under that licence, so long as you comply with this Agreement. The total number of Users over any time period who use or otherwise access the Runtime Environment under such licence, whether directly or via remote access tools, may not exceed the maximum number of authorized Users. The maximum number of authorized Users is that number specified in your multi-user Client Access Licence.

**5.5 WebApp Server Licence - Per System.** You may purchase Web App Server Licences under this Agreement on a per-System or per-User basis. "System" refers to an application server or a Web server. For each Web App Server Licence that you purchase on a per-System basis, Omnis Software grants you a non-exclusive, non-transferable limited Licence to install and execute the Runtime Environment, in object code format only, on one (1) Licenced Server for use by an unlimited number of Users. The number of authorized Systems will be expressly indicated on the applicable Licence certificate provided to you by Omnis Software or its Authorized Distributor. If a number of permitted Systems is not so indicated, then that number will be one (1).

**5.6 WebApp Server Licence - Per User.** For each Web App Server Licence that you purchase under this Agreement on a per-User basis, Omnis Software grants you a non-exclusive, non-transferable limited Licence to install and execute the Runtime Environment, in object code format only, on one (1) Licenced Server for use with one (1) Application only, so long as the total number of Users of the Application does not exceed, at any one time, the number of concurrent users authorized by Omnis Software under that Web App Server Licence and so long as you comply with this Agreement.

**5.7 Serverless Client Licence – Per Library.** For each Serverless Development Licence that you purchase under this Agreement on a per library basis, Omnis Software grants you a non-exclusive, non-transferable limited Licence to install and execute the mobile application wrapper on an unlimited number of mobile devices. Connection of a serverless client deployment to facilitate data or application content update will require the purchase of an appropriate WebApp Server Licence on a per system or per user basis, as described in Section 5.5 and 5.6 above.

**5.8 Users.** "User" means an individual, program or device that ultimately makes use of the data, functionality or services of the Runtime Environment through an Application. If your Licence is granted on a per-User basis, then the maximum number of authorized Users under that Licence will be expressly indicated on the applicable Licence certificate provided to you by Omnis Software or its Authorized Distributor and, if not so indicated, will be one (1). When you install the Runtime Environment under such Licences, it will be configured to block access by Users in excess of this number.

**5.9 No Multiplexing.** Multiplexing is the use of hardware or software to allow multiple Users to access a Runtime Environment concurrently while sharing a session or otherwise consuming only a single Licence seat. Multiplexing is not permitted under this Agreement. Regardless of how many tiers of hardware or software exist between Users and a Runtime Environment, your Applications must always provide a separate persistent session for each User who accesses the Runtime Environment, and you may only have as many sessions open at one time as the number of Users authorized by Omnis Software for the Licence under which that Runtime Environment is used. You may not combine transactions from multiple users onto a single session. Note that these multiplexing restrictions do not apply to Web Server Licences purchased on a per-System basis. If you are concerned about how to apply these multiplexing Licence restrictions for a particular Application, please contact Omnis Software or an Authorized Distributor in your territory for clarification or to request an alternative Licence arrangement.

## 6. Distribution

**6.1 Distribution Is Permitted.** Omnis Software grants you a personal, non-exclusive, non-transferable Licence to distribute the Runtime Environment, in object code format only, with Applications that you create under this Agreement, so long as you purchase and sub Licence one or more Deployment Licences for each Application that you distribute to each Customer.

**6.2 Working with Channel Partners.** Under Section 6.1, you may distribute Runtime Environment through distributors, VARS and OEMs and other resellers, so long as each copy of the Runtime Environment that you distribute is bundled with or incorporated into one of your Applications, you make it clear to your resellers that the Runtime Environment is licenced not sold, and you require your resellers to comply with all of the obligations imposed on you under this Agreement with respect to the Runtime Environment.

**6.3 Contracts with Customers.** Before you or your reseller provides a copy of the Runtime Environment to a Customer, you or your reseller, as the case may be, must enter into a written, legally-enforceable sub Licence agreement with that Customer which:

- (a) expressly affirms that the Runtime Environment is "licenced not sold";
- (b) grants the Customer a non-transferable, nonexclusive Licence install and execute the Runtime Environment for use with a single Application in accordance with the corresponding Deployment Licence or Licences that you have purchased for that Customer;
- (c) prohibits the Customer from distributing, sublicensing, leasing, renting, assigning, or otherwise transferring the Runtime Environment or any activation code;
- (d) prohibits the Customer from decompiling or disassembling the Runtime Environment except to the extent expressly permitted by applicable law and then only for the limited purposes specified in that law;
- (e) prohibits the Customer from using the same activation code to install the Runtime Environment in any manner that exceeds the scope of the Deployment Licence under which the activation code is provided;
- (f) effectively excludes for the express benefit of Omnis Software all warranties and conditions, express and implied, including warranties or conditions of title, and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and
- (g) effectively excludes for the express benefit of Omnis Software all liability for damages, including direct, indirect, special, incidental and consequential damages (such as lost profits) or other damages of any kind arising out of the use of Applications or the Runtime Environment.

Such sub Licence agreements must name Omnis Software as an express third party beneficiary. You must enforce such agreements with the same diligence that you use to enforce similar agreements for other software that you distribute, but in no event less than reasonable efforts. Customers need not physically sign the sub Licence agreement unless a signature is required under applicable law to create an enforceable contract.

**6.4 Distribution Restrictions.** If you distribute the Runtime Environment, then you must include any and all third party Licence files. You will not: (a) grant (or authorize your resellers to grant) a Customer rights to use the Runtime Environment that are broader than the Deployment Licence you have purchased for distribution to that Customer; (b) distribute, sublicense, lease, rent, assign, or otherwise transfer Omnis to any other party except as expressly permitted in Section 6.1; or (c) distribute any component of Omnis that can be used to develop an Omnis Application. You must provide a valid copyright notice in your name on each Application that you distribute with the Runtime Environment. The distribution rights of Section 6.1 are personal to you and cannot be sub-licenced, assigned or otherwise transferred.

**6.5 Relationship with Customers.** You will be solely responsible for your Applications and any services provided to your Customers. Omnis Software and its Authorized Distributors make no warranty, and have no obligation to provide support or other services to your Customers. You will defend and indemnify Omnis Software and its suppliers and Authorized Distributors from any claims or liabilities arising from or related to your Applications or Customers, including claims based on the performance or non-performance of the Runtime Environment. You must enter into transactions with your Customers on your own account and not on behalf of Omnis Software.

**6.6 Open Source.** You may not incorporate into any Application that you distribute to others any "open source" or other code that is licenced to you by a third party under the condition or requirement that any programs incorporated into, derived from or distributed with such code be disclosed or distributed in source code form or distributed at no charge.

## 7. Other Licence Rights

**7.1 Plug-Ins.** Omnis includes plug-in components for use with Internet browser software. These plug-in components are specifically designated in the technical documentation that accompanies Omnis. So long as you comply with this Agreement, Omnis Software grants you a non-exclusive limited Licence during the term of this Agreement to install and execute (and sub Licence your Customers to install and execute) such browser plug-ins on single-user computers for the sole purpose of enabling browser software resident on such computers to communicate with Applications deployed on a Runtime Environment that is resident on a separate computer. The rights granted under this Section do not expand the number of individuals who may use the Runtime Environment under a particular Deployment Licence.

**7.2 Evaluation Licence.** If you have received a copy of Omnis from Omnis Software or its Authorized Distributor, but have not yet purchased a Licence to use Omnis, then Omnis Software grants you a personal, non-transferable, non-exclusive, limited Licence to install and execute Omnis, in object code format only, for your own internal use solely for purposes of evaluating Omnis for no more than ninety (90) days.

**7.3 Demonstration Licence.** Omnis Software may at your request grant you a Deployment Licence in accordance with Section 5 on a demonstration basis. Runtime Environments deployed under a demonstration Deployment Licence which will have a time-limited expiry. You may sub Licence such demonstration Licences to your Customers and prospective Customers for the sole purpose of allowing them to evaluate an Application. UPON EXPIRATION OF THIS TIME PERIOD, THE RUNTIME ENVIRONMENT WILL STOP WORKING AND YOU AND YOUR CUSTOMERS WILL NO LONGER BE ABLE TO USE THE APPLICATION UNLESS YOU PURCHASE A REGULAR DEPLOYMENT LICENCE AT OMNIS SOFTWARE'S THEN-CURRENT TERMS AND PRICES.

**7.4 Backup Copies.** You may make a reasonable number of backup copies of Omnis during the term of this Agreement so long as you do not use such backup copies for any purpose other than to replace the original copy of Omnis provided to you by Omnis Software if such copy is damaged or destroyed. You may make and authorize others to make a reasonable number of backup copies of the Runtime Environment solely to replace copies of Applications that are damaged or destroyed.

## **8. Additional Restrictions and Conditions**

**8.1 Prohibited Uses of Omnis.** You may not do (or permit others to do) any of the following: (a) modify, adapt, alter, translate, or create derivative works of Omnis; (b) merge or otherwise integrate Omnis with any external components or software, other than an Application; (c) reverse engineer, decompile or disassemble Omnis, or otherwise attempt to derive the source code of Omnis except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (d) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Omnis Software or its suppliers on Omnis, including any copies of Omnis that you are permitted to make under this Agreement; (e) use the Runtime Environment as a tool to create other Omnis Applications; (f) circumvent, or provide or use a program intended to circumvent, technological measures (such as activation codes) that control installation or use of Omnis; (g) use an activation code to install or use copies of Omnis in any manner that exceeds the scope of the Licence under which the activation code is provided to you; or (h) otherwise reproduce or use Omnis except as expressly permitted under this Agreement.

**8.2 Hosting.** You and your Customers may host Applications and Runtime Environments for other parties under a WebApp Server Deployment Licence so long as you do not exceed the usage and other limitations set forth in this Agreement. However, you may not otherwise allow third parties to access or use the other functions of Omnis (including the development functions) whether in a time-sharing, hosted, ASP, service bureau or other arrangement.

**8.3 Upgrades.** The Licences granted under this Agreement cover any future maintenance releases, upgrades or other releases of Omnis that you may acquire, at then-current prices and terms, from Omnis Software and Authorized Distributors unless such releases are subject to a separate Licence agreement. The provision of upgrades or other new versions or releases does not expand your Licence rights under this Agreement. If you acquired the accompanying copy of Omnis as an "upgrade" to a previously-installed release (as indicated on the packaging that accompanies Omnis or on the invoice, Licence certificate or product documentation provided to you by Omnis Software or its Authorized Distributor in connection with Omnis, or on the screens displayed by Omnis when it is initially installed), then you may only use the upgrade if you have a valid Licence to that previously-installed release. Your rights to the previously installed release terminate once you install the upgrade.

**8.4 No Separation or Reuse of Components.** You may not break Omnis up into components and install the components on separate computers under a given Licence, except as provided in Section 7.1. Each Deployment Licence under this Agreement is limited to use with the specific Application on which the Runtime Environment is initially deployed. The Runtime Environment may not be used with a different application, even if the end user ceases use of the initial Application.

**8.5 Terms and Conditions; Other Environments.** Terms and conditions that third party system or platform providers require may limit the ability to deploy Omnis applications in certain environments. Omnis Software makes no representations or warranties regarding terms or conditions that may be imposed by other vendors for use of their platforms or systems. By way of example and not limitation, the Omnis iOS client is implemented using the standard iOS controls and APIs, but Apple's Licence terms may impose additional limitations.

**8.6 Confidentiality.** Technical information provided to you under this Agreement, including APIs (other than published documentation), is confidential and proprietary to Omnis Software and may not be disclosed by you to third parties without Omnis Software's express permission.

**8.7 High Risk Activities.** Omnis is not fault tolerant and is not intended for use in high-risk activities. You may not use Omnis, including any Runtime Environment, in the design, construction, operation or maintenance of any nuclear facility or weapon of mass destruction, or for the purpose of aircraft navigation or



control or any other activity in which the failure of Omnis could result in loss of human life, personal injury or property damage.

**9. SERVICES.** There are no services provided under this Agreement. You are responsible for installing Omnis on your computers as permitted under this Agreement. Support, maintenance and other services must be purchased separately from Omnis Software.

**10. FEES.** Licence fees are subject to change. Please consult Omnis Software or its Authorized Distributor as to current fees before placing an order. All Licence fees are non-refundable and non-cancellable except as expressly provided in this Agreement and do not include shipping, sales or use tax, withholding tax, excise tax, VAT or customs duties, all of which you are responsible for paying above and beyond the Licence fees due to Omnis Software or its Authorized Distributor.

**11. LIMITED WARRANTY.** Omnis Software warrants to you, the original purchaser, and to no one else, that, for a period of thirty (30) days after the initial delivery of Omnis to you, the media, if any, on which Omnis is provided to you will be free of defects in materials and workmanship. Your exclusive remedy for breach of this limited warranty is that Omnis Software will replace any defective media that you return to Omnis Software (or the Authorized Distributor from whom you acquired Omnis) within the thirty (30) day warranty period. Any replacement media will be warranted as provided in this Section for the remainder of the original thirty (30) day warranty period or ten (10) days whichever is longer. This limited warranty does not apply to damage resulting from misuse, abuse or neglect. This limited warranty does not apply to any supplements or updates to Omnis that are provided to you after expiration of the thirty (30) day warranty period.

**12. DISCLAIMER OF WARRANTY. EXCEPT FOR THE EXPRESS LIMITED WARRANTY OF SECTION 11, OMNIS IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. OMNIS SOFTWARE HEREBY EXCLUDES AND DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS, EFFORTS OR QUIET ENJOYMENT. THERE IS NO WARRANTY THAT OMNIS IS ERROR-FREE OR WILL FUNCTION WITHOUT INTERRUPTION. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE PERFORMANCE OR USE OF OMNIS. TO THE EXTENT THAT OMNIS SOFTWARE MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.**

**13. LIMITATION OF LIABILITY. IN NO EVENT WILL OMNIS SOFTWARE OR ITS AUTHORIZED DISTRIBUTORS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT OR YOUR USE OF OR INABILITY TO USE OMNIS, EVEN IF OMNIS SOFTWARE OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF OMNIS SOFTWARE AND ITS AUTHORIZED DISTRIBUTORS IN CONNECTION WITH THIS AGREEMENT AND OMNIS, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF LICENCE FEES THAT YOU PAID TO USE OMNIS FOR THE PARTICULAR LICENCE UNDER WHICH LIABILITY HAS ARISEN (NOT INCLUDING FEES FOR SERVICES OR PRODUCTS OTHER THAN OMNIS). THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMIT. YOU ACKNOWLEDGE THAT THE LICENCE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT OMNIS SOFTWARE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NO LICENSOR OR OTHER SUPPLIER OF OMNIS SOFTWARE WILL HAVE ANY LIABILITY TO YOU, WHETHER IN CONTRACT, IN TORT OR OTHERWISE UNDER THIS AGREEMENT OR IN RELATION TO OMNIS. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE.**

**14. TERMINATION.** This Agreement will remain in effect until the expiration of the copyrights in Omnis or until terminated as provided below. If a particular Licence granted to you is for a limited term (as indicated on the packaging that accompanies Omnis or on the applicable invoice, Licence certificate or other product documentation provided to you by OMNIS SOFTWARE or its Authorized Distributor in connection with Omnis, or on the screens displayed by Omnis when it is initially installed), then that Licence terminates upon expiration of that term. You may terminate this Agreement at any time and for any reason, by giving written notice to Omnis Software. Omnis Software may terminate this Agreement, effective immediately upon written notice to you if you (a) fail to pay any portion of the Licence fees when due and fail to cure such non-payment within thirty (30) days after receipt of notice of same, or (b) if you otherwise breach any provision of this Agreement. Upon expiration or termination of this Agreement, you must erase or otherwise destroy all copies of Omnis other than copies of the Runtime Environment that you have distributed to Customers in accordance with this Agreement, and your rights hereunder will immediately end. Notwithstanding the foregoing, Sections 1, 3, 6.5, 8, 12, 13, 15, 16, and 17 will survive expiration or termination of this Agreement for any reason. The termination of this

Agreement will not affect the authorized sub Licence rights granted by you to Customers to use the Runtime Environment in or with Applications that you provide, so long as you or your Customers have paid the applicable Deployment Licence fees.

**15. THIRD PARTY SOFTWARE PROGRAMS.** Omnis contains or may be accompanied by certain open source and other programs ("Third Party Programs") licenced by third party developers ("Third Party Developers"), including the Jikes program supplied by International Business Machines Corporation ("IBM") and other third-party contributors. Copyright notices for Third Party Programs will be provided in Omnis' "About" screen or in the documentation that accompanies Omnis. Certain Third Party Programs are subject to separate third-party Licence terms as specified by their respective Third Party Developers, and these terms are included in the documentation provided with Omnis. By using Omnis, you agree to comply with these third-party Licence terms for the benefit of the applicable Third Party Developer. Subject to any applicable third-party Licence terms, your use of Third Party Software contained in Omnis is subject to this Agreement. Notwithstanding any provision in this Agreement to the contrary, the following terms will apply to IBM's Jikes program:

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## 16. General

**16.1 Trademarks.** No rights to use Omnis Software's logos or other trademarks are granted under this Agreement. If you would like to use Omnis Software's logos or other trademarks, please contact Omnis Software to discuss becoming an authorized value-added reseller.

**16.2 Choice of Law.** If you acquire Omnis directly from Omnis Software or from an Authorized Distributor located in the United States, then the laws of the State of California will govern this Agreement without giving effect to any choice of law principles that would require the application of the laws of a different country or state. If you acquired Omnis from an Authorized Distributor located outside of the United States, then the law of the jurisdiction will govern this Agreement where such distributor's principal place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (USA) do not apply to this Agreement.

**16.3 Compliance with Laws.** You will comply with all applicable export and import control laws and regulations in your use of Omnis and, in particular, you will not export or re-export Omnis, including the Runtime Environment, without all required government Licences. You will defend, indemnify, and hold harmless Omnis Software and its suppliers and Authorized Distributors from and against any violation of such laws or regulations by you. If any approval or registration of this Agreement, or any sub Licence under this Agreement, is required with government authorities where you reside, operate or distribute Applications, then you will secure such approval or registration at your own expense as a condition to your right to use or distribute Omnis under this Agreement.

**16.4 Records.** Omnis Software is entrusting you to keep track of the sub-Licences that you grant to your Customers. Therefore, during the term of this Agreement and for one (1) year after its expiration or termination, you will keep reasonably complete records of your distribution of the Runtime Environment (including the names and addresses of third parties to whom you distribute the Runtime Environment) and will permit Omnis Software or its representatives to review and verify those records to ensure compliance with this Agreement, unless such review is prohibited by applicable law, including any privacy or other law that restricts your ability to share personally-identifiable information. Omnis Software will give you at least ten (10) days advance notice of any such review and will conduct the same during normal business hours in a manner that does not unreasonably interfere with your normal operations. Omnis Software will treat your records as your confidential information.

**16.5 Relationship between the Parties.** The parties are independent contractors and neither party is the agent, partner, employee, fiduciary or joint venturer of the other party under this Agreement. You may not act for, bind, or otherwise create or assume any obligation on behalf of Omnis Software.

**16.6 Assignments.** You may not assign or transfer, by operation of law or otherwise, any of your rights under this Agreement to any third party without Omnis Software's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. Omnis Software may freely assign its rights or delegate its obligations under this Agreement.

**16.7 Language.** This Agreement is in the English language, and its English language version will be controlling over any other translation except as otherwise required by applicable law.

**16.8 Remedies.** Except as otherwise provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. You acknowledge that Omnis contains valuable trade secrets and proprietary information of Omnis Software and its suppliers, that any actual or threatened breach by you of this Agreement by you will constitute immediate, irreparable harm for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**16.9 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**16.10 Severability.** If a court holds any provision of this Agreement unenforceable, such provision may be changed and interpreted by the court to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, you agree that Section 13 will remain in effect notwithstanding the unenforceability of any other provision of this Agreement.

**16.11 Entire Agreement.** This Agreement constitutes the final and entire agreement between the parties regarding the subject of this Agreement and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms of any purchase order or similar document submitted by you to Omnis Software or its Authorized Distributor will have no effect.

**17. INTERNATIONAL PROVISIONS.** If by virtue of Section 16.2 ("Choice of Law") or otherwise, the law governing this Agreement is one of the jurisdictions listed below, then the provisions set forth below that jurisdiction will apply to this Agreement notwithstanding any contrary provision in Sections 1-16:

#### AUSTRALIA



**Limitation of Liability.** Where any applicable legislation implies any term, condition or warranty into this Agreement, and that legislation or any other legislation renders void or prohibits provisions excluding or modifying the application of, exercise of or liability under such implied term, condition, warranty or remedy, Omnis Software's liability for any breach of such imposed term, condition or warranty or under such remedy, will be limited at Omnis Software's option in any one or more of the ways permitted in that legislation including, where so permitted the ways set out in clauses (a) or (b), as applicable.

- (a) If the breach of an implied term relates to goods, Omnis Software may elect any one or more of the following remedies: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or acquiring goods; or (iv) the payment of the cost of having the goods repaired; and
- (b) If the breach of an implied term relates to services, Omnis Software may elect any one or more of the following remedies: (i) supply of those service again; or (ii) the payment of the cost of having those services supplied again.

**Consequential Loss.** In this Agreement "consequential, indirect, special or incidental damages" includes but is not limited to loss of profits, loss of or damage to goodwill or any other expectation benefit, and any liability to any third party.

**Contracts with Customers.** In addition to the matters set out in section 6.3(a) to (g) of this Agreement, each sub Licence agreement entered into by you or your reseller ("Sub-licence") must contain:



- (a) clauses of similar effect as the above Limitation of Liability clauses, and an exclusion of liability for "consequential, indirect, special or incidental damages" (as defined); and
- (b) the right to assign the Sub-Licence to Omnis Software at any time.

You agree that upon request you will assign your rights under any Sub-Licence to Omnis Software.

#### CANADA



**Language.** The parties to this Agreement have expressly required that the present Agreement and its Exhibits be drawn up in the English language. / Les parties aux présents ont expressément exigé que la présente convention et ses Annexes soient rédigées en langue anglaise.

#### EUROPEAN UNION



**Reverse Engineering.** Notwithstanding the provisions against reverse engineering set forth in Section 8 above, you may reverse engineer, decompile, disassemble or otherwise attempt to derive the source code of Omnis only as expressly and strictly permitted by the applicable laws implementing Articles 5 and 6 of European Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, and then only for the limited purposes of achieving interoperability with other independently-developed computer programs. Before exercising the rights set out in this paragraph, you must first notify Omnis Software of your intention to do so, so that Omnis Software may first have the opportunity of providing you with the information you need to achieve interoperability. You may not: (i) perform any acts beyond those that are strictly necessary to achieve the interoperability as permitted under applicable law; (ii) supply the information obtained by reverse engineering Omnis to any person to whom it is not necessary to supply it in order to achieve interoperability; (iii) use such information to create a program that is substantially similar in its expression to Omnis or to do any act restricted by copyright; or (iv) retain or use any such information that is not required for use in achieving interoperability.

#### FRANCE



**Jurisdiction.** Any dispute, controversy or claim relating to or in connection with this Agreement and arising between you and Omnis Software or its Authorized Distributor will be brought before the French courts.

**Reverse Engineering.** See provisions above under European Union.

**Liability.** Limitation of liability provided in Section 13 will not apply in case of wilful misconduct or gross negligence of Omnis Software or its Authorized Distributor.

**Termination.** For the avoidance of doubt, when the Agreement is governed by French law, "termination" will have the meaning of "résiliation de plein droit".

#### GERMANY



**Reverse Engineering.** See provisions above under European Union. Nothing in this Agreement will be deemed to exclude or limit your rights under Section 69d and 69e of the Copyright Act.

**Limited Warranty.** Omnis Software warrants to you that Omnis and its accompanying documentation will be free from defects.

If a Deployment or Development Licence granted under this Agreement is for an unlimited term and a one-time Licence fee, then claims for defects with respect to that Licence are time barred if not made within one (1) year after the inception of the Licence or delivery of Omnis, whichever is later. Further, upon delivery of Omnis, you will inspect it and the accompanying documentation for completeness and potential defects and will notify Omnis Software immediately of any nonconformity. If you fail to so notify Omnis Software, then you may not raise claims for re-delivery, reduction, cancellation, damages or compensation with respect to such defects that would have been obvious upon inspection. The parties agree that Section 377 of the German Commercial Code is applicable.

If a Development or Deployment Licence granted under this Agreement is for a limited term or requires recurring Licence fees, then you must notify Omnis Software of any obvious defect of Omnis within one (1) week after the defect appears. If you fail to so notify Omnis Software, then you may not reduce the Licence fee pursuant to Section 536, paragraph 1 of the Civil Code. Omnis Software will cure defects of Omnis or accompanying documentation within a reasonable time after having received such notice.

**Disclaimer of Warranty.** Neither Omnis Software nor its Authorized Distributor warrants fitness for a particular purpose, a particular quality or particular results of Omnis. Omnis is expressly not designed and suitable for High Risk Activities as laid down in Section 8.6.

Omnis Software and its Authorized Distributors also disclaim all warranty insofar as you change Omnis yourself or through a third person without the expressed consent of Omnis Software. This disclaimer does not apply as far insofar as you are entitled to change Omnis according to this Agreement or by law, especially according to Section 536a paragraph 2 of the Civil Code, and you prove that the changes are done professionally and documented comprehensively so that the curing of defects remains possible and reasonable for Omnis Software.

**LIMITATION OF LIABILITY.** TOTAL CUMULATIVE LIABILITY OF OMNIS SOFTWARE AND ITS AUTHORIZED DISTRIBUTORS IN CONNECTION WITH THIS AGREEMENT AND OMNIS, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED THREE (3) TIMES THE AMOUNT OF LICENCE FEES THAT YOU PAID TO USE OMNIS FOR THE PARTICULAR LICENCE UNDER WHICH LIABILITY HAS ARISEN (NOT INCLUDING FEES FOR SERVICES OR PRODUCTS OTHER THAN OMNIS). THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMIT.

Neither Omnis Software nor its Authorized Distributor is liable for damages from defects that have been present at the time of entering into the contract and that occurred without default of either Omnis Software or its Authorized Distributor.

Neither Omnis Software nor its Authorized Distributor is liable for acts of simple negligence except if they are caused by a breach of any substantial contractual obligation (cardinal obligation). Omnis Software's liability is limited to the loss that is predictable and that is typical for the contract.

Neither Omnis Software nor its Authorized Distributor finally is liable for the loss of data and/or programs as far as the loss is based on the fact that you have refrained from making back-up copies and therefore from ensuring that lost data can be restored with reasonable effort.

Nothing in this Agreement will be deemed to exclude or limit Omnis Software or its Authorized Distributor's liability in respect of (1) injuries to or death of any person, caused by wilful intent or negligence of Omnis Software or its Authorized Distributor, or such parties' representatives, auxiliary persons (executive and non-executive staff) and subcontractors; (2) loss and damages caused by wilful intent or gross negligence by Omnis Software or its Authorized Distributor, or Omnis Software's or its Authorized Distributor's representatives, auxiliary persons (executive and non-executive staff) and subcontractors; (3) any indemnity or guarantee given by Omnis Software or its Authorized Distributor under this agreement - although it is expressly not intended to give any indemnity or guarantee; and (4) any liability according to the German Product Liability Act.

**Assignment.** You expressly agree that Omnis Software may assign its rights to any third party any time. In case of an assignment you are entitled to terminate this Agreement. In the event of any such termination, you will not be entitled to any refund of the fees paid by you hereunder. Omnis Software may delegate its obligations under this Agreement without restrictions.

#### UNITED KINGDOM



**Liability.** Neither Omnis Software nor its Authorized Distributor excludes or limits its liability in respect of (a) its wilful default or fraud; or (b) death or personal injury resulting from its negligence (within the meaning of section 2 of the Unfair Contract Terms Act 1977 (UK)); or (c) any breach of implied warranties as to title within the meaning of section 12 of the Sale of Goods Act 1979 (UK); or (d) other liability that cannot be excluded by contract.

**Reverse Engineering.** See provisions above under European Union.

#### UNITED STATES



**Limited Warranty.** Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. The limited warranty of Section 11 gives you specific legal rights, and you may also have other legal rights, which vary from state to state.

**Liability.** Some states do not allow the exclusion or limitation of incidental or consequential damages, so the limitations or exclusions of Section 13 may not apply to you.

**U.S. Government Rights.** If you are a branch or agency of the U.S. Government, then you acknowledge that Omnis is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such

terms are used in 48 C.F.R. 12.212. Any technical data provided with Omnis is commercial technical data as defined in 48 C.F.R. 12.211. Consistent with 48 C.F.R. 12.211 through 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, and 48 C.F.R. 252.227-7015, all U.S. Government end users acquire Omnis with only those rights set forth in this Agreement.

**Export Control.** Regardless of any disclosure made to Omnis Software or its Authorized Distributor of an ultimate destination of Omnis and accompanying technical documentation, you acknowledge that all such materials are being released or transferred to you in the United States and may be subject to U.S. export control laws and regulations including regulations of the U.S. Bureau of Industry and Security.

**Venue.** Any legal action between you and Omnis Software or its Authorized Distributor arising out of this Agreement or your use of Omnis must be instituted exclusively in the courts of England, and you consent to jurisdiction and venue in such courts.

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