

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE SUBSCRIBING TO, OR USING ANY PART OF, THE SERVICES:

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Orcuma Limited incorporated and registered in England and Wales with company number 07739226 whose registered office is at 30 Orchard Road, Whickham, Newcastle upon Tyne, Tyne and Wear, NE16 4TF (**Licensor** or **we**) for the [service] which incorporates the online software applications (**Service Software**) provided by the Licensor as part of the subscription service provided by us to you via [INSERT WEB ADDRESS] (**Services**) and the [[online OR electronic] documentation] supplied in connection with the Services (**Documentation**).

BY CLICKING ON THE "ACCEPT" BUTTON BELOW [OR BY ACTUALLY USING THE SERVICES (IN WHICH CASE WE WILL TREAT YOUR USE OF THE SERVICES AS ACCEPTANCE OF THE TERMS FROM THAT POINT ONWARDS) YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE ARE UNWILLING TO LICENSE THE SERVICE SOFTWARE TO YOU AND YOU MUST DISCONTINUE THE SUBSCRIPTION PROCESS NOW BY CLICKING ON THE "REJECT" BUTTON BELOW .

1. Grant and scope of licence

In consideration of payment by you of the agreed licence fee and you agreeing to abide by the terms of this Licence, the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the Service Software and the Documentation [in the UK] on the terms of this Licence.

2. Licensee's undertakings

2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

2.1.1 not to copy the Service Software or Documentation;

2.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Service Software or Documentation;

2.1.3 not to make alterations to, or modifications of, the whole or any part of the Service Software, nor permit the Service Software or any part of it to be combined with, or become incorporated in, any other programs;

2.1.4 not to disassemble, decompile, reverse engineer or create derivative works based on, the whole or any part of the Service Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Service Software with another software program, and provided that the information obtained by you during such activities:

(a) is used only for the purpose of achieving inter-operability of the Service Software with another software program; and

(b) is not unnecessarily disclosed or communicated without the Licensor's prior written consent to any third party; and

(c) is not used to create any software which is substantially similar to the Service Software;

2.1.5 not to provide or otherwise make available the Service Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person [other than your employees] without prior written consent from the Licensor;

3. **Intellectual property rights**

3.1 You acknowledge that all intellectual property rights in the Service Software and the Documentation anywhere in the world belong to the Licensor, that rights in the Service Software are licensed (not sold) to you, and that you have no rights in, or to, the Service Software or the Documentation other than the right to use them in accordance with the terms of this Licence.

3.2 You acknowledge that you have no right to have access to the Service Software in source code form or in unlocked coding or with comments.

3.3 [The integrity of this Service Software is protected by technical protection measures (TPM) so that the intellectual property rights, including copyright, in the Service Software of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.]

3.4 You acknowledge that the Service Software has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Service Software as described in the Documentation meet your requirements.

3.5 You acknowledge that the Service Software may not be free of bugs or errors, and agree that the existence of minor errors shall not constitute a breach of this Licence

4. **Licensor's liability**

4.1 Nothing in this Licence shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation.

4.2 Subject to condition 4.1, the Licensor's liability for losses suffered by you arising out of or in connection with this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall exclude:

4.2.1 loss of income;

- 4.2.2 loss of business profits or contracts;
- 4.2.3 business interruption;
- 4.2.4 loss of the use of money or anticipated savings;
- 4.2.5 loss of information;
- 4.2.6 loss of opportunity, goodwill or reputation;
- 4.2.7 loss of, damage to or corruption of data; or
- 4.2.8 any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;

provided that this condition 4.2 shall not prevent claims for loss of or damage to your tangible property that fall within the terms of condition **Error! Reference source not found.** or any other claims for direct financial loss that are not excluded by any of categories (a) to (h) inclusive of this condition 4.2.

- 4.3 Subject to condition 4.1 and condition 4.2, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to the price paid for the Services during the 12 months preceding the date on which the claim arose.
- 4.4 Subject to condition 4.1, condition 4.2 and condition 4.3, the Licensor's liability for infringement of third-party intellectual property rights shall be limited to breaches of rights subsisting in the UK.
- 4.5 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Service Software and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Service Software and Documentation which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

5. **Termination**

- 5.1 The Licensor may terminate this Licence immediately by written notice to you if:
 - 5.1.1 You commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
 - 5.1.2 [a petition for a bankruptcy order to be made against you has been presented to the court; or]
 - 5.1.3 [the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of

bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986).]

5.2 Upon termination for any reason:

5.2.1 all rights granted to you under this Licence shall cease;

5.2.2 you must cease all activities authorised by this Licence; and

5.2.3 you must immediately pay to the Licensor any sums due to the Licensor under this Licence.

6. **Transfer of rights and obligations**

6.1 This Licence is binding on you and us, and on our respective successors and assigns.

6.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.

6.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of our rights or obligations arising under it, at any time during the term of the Licence.

7. **Notices**

All notices given by you to us must be given to Orcuma Limited at 30 Orchard Road, Whickham, Newcastle upon Tyne, Tyne and Wear, NE16 4TF [or email paul.mitchell@orcuma.com]. We may give notice to you at either the e-mail or postal address you provided to us [or our representative] when subscribing to the Services. Notice will be deemed received and properly served immediately when posted on our website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

8. **Events outside our control**

8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by events outside our reasonable control (**Force Majeure Event**).

8.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- 8.2.1 strikes, lock-outs or other industrial action;
 - 8.2.2 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - 8.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
 - 8.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - 8.2.5 impossibility of the use of public or private telecommunications networks;
 - 8.2.6 the acts, decrees, legislation, regulations or restrictions of any government.
- 8.3 Our performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

9. **Waiver**

- 9.1 If we fail, at any time during the term of this Licence, to insist upon strict performance of any of your obligations under this Licence, or if we fail to exercise any of the rights or remedies to which we are entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
- 9.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.
- 9.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

10. **Severability**

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

11. **Entire agreement**

- 11.1 This Licence and any document expressly referred to in it constitute the whole agreement between us and supersedes any previous arrangement, understanding or agreement between us, relating to the licensing of the Software and Documentation.
- 11.2 We each acknowledge that, in entering into this Licence (and the documents referred to in it), neither of us relies on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this Licence or not) other than as expressly set out in this Licence or those documents.

11.3 Each of us agrees that the only rights and remedies available to us arising out of or in connection with a Representation shall be for breach of contract as provided in this Licence.

11.4 Nothing in this clause shall limit or exclude any liability for fraud.

12. **Law and jurisdiction**

This Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.