

ORCA SOFTWARE RENTAL AGREEMENT

Version 1.13

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BACKGROUND

Adtec Software Ltd has created the Orca product which is a client / server based product utilising a Microsoft SQL Server database as it backend data repository.

The frontend screens are developed using a blend of Microsoft .Net technologies.

Potential licensees may receive a personal demonstration of the Software by an Adtec representative to verify whether the Software meets their requirements.

Change History

Date	Version	Description
30/10/2017	1.1	Additions to Interpretations section (1)
31/10/2017	1.2	Additions to Interpretations section (1)
31/10/2017	1.2	Change to Payment Terms and Conditions (iv)
13/02/2018	1.3	Changes to section 4g
25/06/2018	1.4	Correction to 17 ii
10/08/2018	1.5	Change to 5f to say payment terms and conditions
15/10/2019	1.6	Added API usage, section(3)
15/10/2019	1.6	Removal of Support Hours restriction, section 4(c)
15/10/2019	1.6	Additions to Interpretations section(1)
15/10/2019	1.6	Amendment to excluded support services (section g)
30/03/2021	1.7	Changes to payment terms (section 17.ii)
24/06/2021	1.8	Amendment to excluded support services (upgrades)
24/06/2021	1.9	Changes to Implementation Service (Section 7)
29/06/2021	1.10	Section 4b – Exclusion of use of Licensee VPNs
25/01/2023	1.11	Removal of 14g – Visits to Adtec office to perform audits.
25/01/2023	1.12	Section 4g – PEN Testing exclusion added.
27/02/2024	1.13	Added section 3.e and amendment to section 17.iv

1. INTERPRETATION

In this Agreement the following expressions have the following meanings unless inconsistent with the context:-

“Licensee”

The name and registered address of the company renting the Software from Adtec.

“Licence”

The licence to use the Software set out at Clause 3;

“Licence Agreement”

A document agreed between Adtec and the Licensee which shows the number of licences required along with the monthly Price;

“Licence Key”

A global user ID used to activate the software.

“Licence Date”

The date of receipt of a signed Licence agreement;

“Event of Force Majeure”

Any event beyond the reasonable control of a party including but not limited to fires, strikes or lock outs, insurrection or riots, delays in transportation, inability to obtain supplies, supplier failure, failure of power or telecommunications facilities and the requirements or regulations of any civil or military authority, but not including any inability to pay any sums due under this Agreement;

“Modifications”

Any modifications to the Software requested by the Licensee;

“Price”

The monthly rental price of the Software (plus Value Added Tax at the rate prevailing from time to time) set out in the Licence Agreement but not including any fees paid in relation to the Modifications or the Third Party Programs;

“Software”

The programs detailed in Licence Agreement, excluding the Third Party Programs, all of which are to be supplied by Adtec in machine executable form only and any upgrades to the same provided by Adtec pursuant to the Software Support;

“Software Amendments”

Any corrections to faults provided in relation to the Software as part of Software Support or, from time to time, in respect of Third Party Programs (if any);

“Software Support”

The Software support services to be provided to the Licensee on the terms set out in clause 4;

“Third Party Programs”

Any programs owned by a third party and detailed in Licence Agreement;

“Third Party Program Amendments”

Any service packs or patches provided by the appropriate Third Party Program owner for onward distribution by Adtec in relation to its Third Party Programs on a free of charge basis;

“User Documentation”

The Software user guides which may be downloaded from Adtec’s website at <http://www.adtecsoftware.co.uk/help-support/> using the client login details supplied to you by Adtec.

“Fault”

a manifestation of an error in the software, also known as a Defect or Bug.

“Retail Prices Index”

The index of retail prices (all items figure) published by the UK Government from time to time;

“Supplementary Charges”

Adtec charges at its standard rates in force from time to time for any support service requested by the Licensee and undertaken by Adtec which is outside the scope of the Software Support detailed in this Agreement;

“Working Day”

Any day other than Saturday or Sunday or a bank or public holiday in England;

“Working Hours”

Monday to Thursday 9.00am to 5.30pm, Friday 9.00am to 4.30pm UK time on Working Days.

“General Release”

A triannual release of Orca with new features. (Available February, June and October)

“Hotfix”

A release of Orca which contains a fix to an urgent issue that cannot wait until the next release for General Availability use.

“API”

An application programming interface (API) is an interface intended to simplify the building of client-side software that needs to communicate directly with Orca.

“API Service User”

A non human user account used to communicate with the Orca software via the API.

“API Key”

A unique key used by an ‘API Service User’ to authenticate a connection via the API.

“External Application”

A program that has not been developed by Adtec that is required to communicate with Orca.

2. SCOPE OF AGREEMENT

Adtec agrees that upon receipt of a confirmed Licence Agreement and in consideration of the payment of the Price by the Licensee in accordance with this Agreement it will grant the Licence to the Licensee.

3. LICENCE

- a. Adtec grants to the Licensee a non-exclusive and non-transferable right to use the Software solely for its own internal business purposes in accordance with the terms and conditions of this Agreement.

The Licence will continue indefinitely until terminated in accordance with this Agreement.

This Licence shall also apply to all future software (including, without limitation, any and all upgrades, Software Amendments or fixes of the Software) supplied to the Licensee by Adtec under this Agreement from time to time.

- b. Use of the Software shall be strictly limited to the number of licences set out in the **Licence Agreement** and shall be in accordance with the terms of this Agreement.
- c. The Licensee shall have no right to decompile, copy, adapt or modify the Software.
- d. All intellectual property rights in the Software and User Documentation belong to and shall at all times remain (as between Adtec and the Licensee) with Adtec.
- e. This Licence agreement replaces any previous version of this agreement that may have been in place.

API Usage.

- a. Use of the API shall be strictly limited to the number of API Service Users set out in the **Licence Agreement** and shall be in accordance with the terms of this Agreement.
- b. The Licensee may not use the API to circumvent the requirement for an individual Agent User Licence.
- c. A Licence is required for each 'API Service User' wishing to utilise the API.
- d. Each external application is required to use its own API Service User.

4. SOFTWARE SUPPORT

a) Support Services to be provided by Adtec

In consideration of payment by the Licensee of the Price, Adtec shall provide the following Software Support during Working Hours.

- i. Online helpdesk for reasonable and general user enquiries from the Licensee in respect of the Software.
- ii. Reasonable telephone assistance and proposed resolutions in the diagnosis and rectification of Faults.

b) Licensee Provision

The Licensee will provide Adtec with a means of remote access via the internet, preferably using TeamViewer or equivalent as Adtec may reasonably require to enable it to carry out its obligations under this Agreement.

Adtec cannot install any VPN software supplied by the Licensee as this would expose Adtec equipment on the Licensee network.

c) Support Hours

Support tickets can be raised on our helpdesk portal 24 hours a day, 7 days a week.

A support agent will respond to your ticket within working hours on a working day.

d) Fault Categories

Where the Licensee at any time discovers any Fault in the Software then it shall as soon as is reasonably practicable, notify Adtec of the same.

Adtec shall use its reasonable endeavours to respond to the Licensee within four (4) working hours of notification to investigate the problem and allocate a Category to the Fault.

There shall be three defined sub-sets of Fault:-

“Category A” shall be a critical Fault which makes the Software unusable;

“Category B” shall be a Fault which is not Category A or Category C; and

“Category C” shall be a minor cosmetic Fault, which does not affect the accuracy or performance of the Software.

e) Fault Correction

Adtec shall use its reasonable endeavours to respond to and to fix Faults notified to it by the Licensee dependent on the category of Fault reported by the Licensee in the following manner

Category A

Adtec shall fix the Fault concerned as soon as possible thereafter and release a Hotfix within two (2) weeks.

Category B

Adtec shall fix the Fault concerned and release a Hotfix within one (1) month.

Category C

Adtec shall fix the Fault concerned within four (4) months and release it in the next General release.

f) Duration

Software Support begins on the Licence Date and continues indefinitely until terminated by either party subject to **clause 10**.

g) Excluded Support Services

Software Support does not include any work in relation to Third Party Programs, Training, Audits, PEN Tests, Upgrades, completing supplier due diligence questionnaires, providing API support to anybody other than the Licensee, or the diagnosis and rectification of any Fault or failure resulting from:-

- i. improper use, operation or neglect of the Software;
- ii. modification of the Software by or on behalf of the Licensee or any third party or its merger (in whole or in part) with any other software;
- iii. failure by the Licensee to implement and use recommendations in respect of the Software or solutions to Faults previously supplied by Adtec;
- iv. failure by the Licensee to implement and use any Software Amendment or Third Party Program Amendment;
- v. failure of any hardware, any network, cabling, peripheral or telecommunications equipment, or the effect of lightning or any electrical fault;
- vi. Faults which cannot be reproduced by Adtec;
- vii. any change of configuration of the operating environment from the configuration which existed at the date of this Agreement;
- viii. the inserting / updating by the Licensee of any data into the Software via any means other than ETL Studio, Adtecs own Gateway tables or the Orca API;
- ix. the Licensee importing data incorrectly

If Adtec provides services in respect of any excluded support services it shall be entitled to invoice Supplementary Charges for such services.

h) Definition of the Software

The Licensee and Adtec agree that all Software Amendments and other amended forms of the Software supplied under this Agreement shall be deemed to become Software for the purpose of this Agreement.

5. MODIFICATIONS

- a. The Licensee shall notify Adtec in writing at any time if it requires Modifications to be made to the Software.
- b. Adtec shall be under a duty to make any reasonable Modifications requested, reasonable to be judged based on past precedent.
- c. If Adtec agrees to make the Modifications the Licensee shall provide:
 - a. a sufficiently detailed description of the Modifications required so that Adtec has sufficient information to make the Modifications; and
 - b. all other information and access to the Software as Adtec may reasonably require.
- d. If Adtec agrees to make the modification, a timescale and delivery date will be mutually agreed and shown on the estimate for the work
- e. If Adtec gives an estimate of the cost of implementing the Modifications it will do so in good faith but shall not be bound by the estimate.
- f. Adtec shall be entitled to charge for any Modifications at Adtec's standard rates and subject to Adtec's standard payment terms and conditions for provision of such services.
- g. The Licensee and Adtec agree that all Modifications shall be deemed to become Software for the purpose of this Agreement. All intellectual property rights in any Modification shall belong to Adtec.

6. TRAINING SERVICES

All training of the Software and Third Party Programs, shall be provided at Adtec's standard rates and subject to Adtec's standard terms and conditions for provision of such services.

7. IMPLEMENTATION / UPGRADE SERVICES

All installation of the Software and Third Party Programs, consultancy and other ancillary services including performing upgrades shall be provided at Adtec's standard rates and subject to Adtec's standard terms and conditions for provision of such services.

8. WARRANTY

- a. Adtec warrants that it and its employees, agents and subcontractors shall use reasonable skill and care in the provision of the Software Support and any Modifications.
- b. Adtec accepts no responsibility for any failure of the Third Party Programs to comply with their published specifications and does not warrant that the Software will run without interruption. In addition, Adtec gives no assurances concerning the response times that will be achieved using the Software in any given set of circumstances and makes no recommendation concerning the sizing of hardware to be used.

9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- a. Adtec warrants to the Licensee that Adtec is entitled to grant the Licence and that neither use nor possession of the Software in accordance with this Agreement will subject the Licensee to any valid intellectual property rights infringement claim in the United Kingdom by a third party.
- b. Adtec will indemnify the Licensee subject to **clause 11** against any and all damages or legal costs awarded against the Licensee as a result of any claim by a third party that the Licensee's use or possession of the Software in accordance with this Agreement infringes that third party's intellectual property rights provided as a condition precedent that :-
 - i. the Licensee promptly notifies Adtec following receipt of the claim and provides Adtec with all information reasonably available to the Licensee and any assistance in the claim as Adtec reasonably requires from time to time; and
 - ii. the Licensee makes no admission or in any other way prejudices Adtec's defence of the claim and provides Adtec with sole control of the defence of the claim and all related settlement negotiations.
- c. Adtec shall have no liability for any claim of infringement based on or to the extent arising from:-
 - i. use of an outdated or unaltered release of any Software if such infringement would have been avoided by use of updated and amended Software which had been offered to the Licensee at no specific additional cost to the Licensee; or
 - ii. the combination or use of the Software with hardware, software or third party software not approved in writing by Adtec; or
 - iii. the use of any Software that has been modified or altered other than by Adtec or with Adtec's prior written permission; or
 - iv. the use of any Software in breach of the terms of this Agreement.
- d. In the event of a breach of **clause 9a**, Adtec will be entitled at its own expense and option either to:
 - i. procure the right for the Licensee to continue using the Software; or
 - ii. make such alterations, modifications or adjustments to the Software so that the Software becomes non-infringing without causing a material diminution in performance or function; or

- iii. replace the Software with a non-infringing substitute provided that such substitute does not result in a material diminution in performance or function.

10. TERMINATION AND POST TERMINATION PROVISIONS

- a. Subject to **clause 10b** this Agreement may be terminated by notice in writing with immediate effect:-
 - i. by Adtec if the Licensee fails to pay any sum due under this Agreement within fifteen (15) days of receipt of written notice from Adtec that payment is overdue;
 - ii. by the Licensee by giving 30 days notice in writing.
- b. Upon termination of this Agreement for any reason the Licence granted hereunder shall terminate and the Licensee shall immediately cease use of the Software. The Licensee shall immediately on such termination allow Adtec to remove the software Licence Key from the Licensees systems.

11. LIABILITY

- a. Adtec shall not be liable for any claim for loss of profit or for any damage to, loss of or costs in respect of any consequential or indirect loss, including without limitation loss of revenues, goodwill or business opportunities.
- b. Adtec will not be liable to the Licensee for any loss or corruption of data, software or database configuration held by the Licensee to the extent that the loss could have been avoided by the Licensee keeping proper back up copies of its data, software or database configuration in accordance with best data processing practice.
- c. Notwithstanding anything to the contrary in this Agreement Adtec's liability to the Licensee:-
 - i. for death or personal injury caused by the negligence of Adtec, its employees, agents or sub-contractors;
 - ii. under Part 1 of the Consumer Protection Act 1987;
 - iii. due to any breach by Adtec of conditions as to title or warranty as to quiet possession;
or
 - iv. for fraud (including without limit, fraudulent misrepresentation);

is not limited (but nothing in this clause confers any right or remedy upon the Licensee to which it would not otherwise be entitled).

12. CONFIDENTIALITY

- a. Adtec and the Licensee undertake to each other :-
 - i. to keep confidential all information concerning the business and affairs of the other that it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance of, this Agreement (the “Information”). For the avoidance of doubt the Licensee agrees and acknowledges that the Software and the User Documentation form part of the Information of Adtec;
 - ii. not to disclose the Information in whole or in part to any other person without the other's written consent, save those of its employees, agents and sub-contractors involved in the implementation and/or support of the Software and who have a need to know the same; and
 - iii. to use the Information solely in connection with the implementation and/or support of the Software and not for its own benefit or the benefit of any third party.
- b. The provisions of **clause 12a** do not apply to the whole or any part of the Information which is already in the public domain, or which is lawfully obtained after the Licence Date free of any duty of confidentiality otherwise than directly or indirectly from the other party to this Agreement, or can be shown to be already in the other's possession other than as a result of a breach of this **clause 12**.
- c. Adtec and the Licensee undertake to each other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this **clause 12** and to take all reasonable steps from time to time to ensure compliance by their employees, agents and sub-contractors with the provisions of this **clause 12**.

13. SOURCE CODE ESCROW

- a. If required by the Licensee, Adtec will join with the Licensee and enter into an escrow agreement under which the source code for the software (but for the avoidance of doubt, not the source code for Third Party Programs) shall be lodged, on appropriate terms based on the escrow company's then standard terms.
- b. Notwithstanding the escrow company's standard terms, the Licensee shall be responsible for all costs associated with such arrangements and promptly reimburse any costs incurred by Adtec in this regard.

14. GENERAL

- a. This Agreement (including the Licence Agreement) forms the entire agreement between the parties on its subject matter and supersedes all previous contracts, arrangements, representations (other than fraudulent misrepresentations) or understandings between Adtec and the Licensee, in each case, whether written, arising from custom or oral.
- b. Neither party will be liable for any breach of its obligations resulting from an Event of Force Majeure. The party affected by an Event of Force Majeure agrees to give written notice to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- c. The Licensee may not assign, sub-licence, transfer, mortgage or charge any of its rights or obligations under this Agreement.
- d. Adtec may assign its rights and obligations under this Agreement without consent on giving written notice to the Licensee.
- e. Adtec may sub-contract any or all of its obligations under this Agreement to a UK based sub-contractor, subject only to accepting the sub-contractor's acts as its own.
- f. This Agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.
- g. This Agreement is governed by and is to be construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.

15. DATA PROTECTION

Adtec is a BS EN ISO/IEC 27001:2017 accredited company, Certificate Number 216020 and is registered with the Information Commissioners Office ISO reference ZA224584.

- a. The Parties agree that, for the purposes of this Agreement in respect of the Personal Data, the Licensee shall be a Data Controller and Adtec shall be a Data Processor of the Licensee.
- b. Adtec shall only process Licensee Personal Data:
for the purpose of providing the Services in accordance with the provisions of this Agreement, and only on instructions from the Licensee.
- c. Adtec shall take such security measures as are required to enable it to process all Licensee Personal Data in compliance with the GDPR principles as outlined on their website
<http://www.adtecsoftware.co.uk/gdpr/>
- d. Adtec shall implement any change to its data processing operations that is identified by the Licensee as being reasonably necessary for Adtec to comply with its obligations above.
- e. All Licensee Personal Data processed by Adtec shall belong to the Licensee.

16. PROFESSIONAL INDEMNITY

Adtec has Professional Indemnity Insurance covering claims up to the value of £1,000,000.
A copy of which can be provided upon request.

17. PAYMENT TERMS AND CONDITIONS

- i. All sums payable under this Agreement are exclusive of VAT.
- ii. All invoices delivered to the Licensee pursuant to this Agreement shall be collected by direct debit upon the due date of the invoice. If the Licensee opts not to pay by direct debit the invoice must be paid by the Licensee on or before the invoice due date.
- iii. If the Licensee fails to pay any monies due under or in connection with this Agreement on the due date for payment then without prejudice to any other right or remedy due to Adtec, Adtec will be entitled to:-
 - suspend performance of any obligation owed by Adtec under this Agreement until such payment is made; and/or
 - charge interest on any payments due under this Agreement (after as well as before judgment) at the rate of 2% per annum above the base rate of Barclays Bank plc for the time being in force calculated from the date on which the outstanding sum fell due to the date upon which it is paid; and/or
 - suspend all of the Licensee's rights to use the Software under the Licence.
- iv. Adtec shall be free to vary the Price not more than once each year.
The percentage increase shall not be greater than the percentage increase in the Retail Prices Index (all items) for the relevant period, plus 5%.