



## OCCUPATIONAL RESEARCH AND ASSESSMENT, INC. SOFTWARE LICENSE AGREEMENT

- 1. Welcome; Parties to Agreement.** Welcome to Occupational Research and Assessment, Inc., with offices at 124 Elm Street, Big Rapids, MI 49307 (“ORA”), provider of MDI Log software (“MDI Log” or the “Software”). This Software License Agreement, including all Exhibits (“Agreement”) is a legal contract between ORA and the registrant/entity identified on the last page of this Agreement or in the electronic Software registration form (“Customer” or “User”).
- 2. Effective Date.** This Agreement is effective on the date last physically signed or, if accepted electronically, Customer “signs” and accepts this Agreement and any renewal by (a) clicking “I agree” at the bottom of this Agreement, or (b) clicking “I agree” to any electronic communication at [www.mdilog.com](http://www.mdilog.com) (the “Site”) inquiring as to acceptance of the Agreement, any renewal, and any amendments.
- 3. Entire Agreement.** This Agreement may be updated and modified by ORA from time to time. Those modifications are incorporated as part of the Agreement. Customer will be notified of significant modifications when it logs on or accesses its account. If Customer does not accept the modifications to the Agreement, its sole remedy is to conclude its subscription at the end of the then-current term, or sixty (60) days, whichever is less.
- 4. Customer Account: Representations and Warranties; Indemnification.**
  - a. *Content.* To create the case management portfolio, upload video, images, text, sound recordings, and other content (“Content”), and to access some features and services offered by ORA at the Site, Customer must create an account. Customer represents and warrants that:
    - i. its authorized representatives will be the only persons uploading Content and engaging in transactions through that account;
    - ii. it will keep passwords secure;
    - iii. it will notify ORA of any suspected breach of security or unauthorized use of its account;
    - iv. all information provided in connection with its account is accurate;
    - v. it has the right to transact business in the US, and to enter into this Agreement for the use of the Site and the Software;
    - vi. it has the right to upload the Content to the database; possession and use of the Content is lawful; and storage of it by ORA or its third party providers does not violate any state or federal law or violate the rights of any third party;
    - vii. the person signing this Agreement has the actual authority to bind the Customer to its terms and conditions;

- viii. it shall not assign or transfer the account to a third party, and shall not enable access to the account or the Site by persons who are not authorized account holders; and
- ix. communications through the Site (for example, with other users) or the sharing of information must be in the actual name of Customer, shall be consistent with authorized purposes of the Site, and shall be in compliance with all applicable laws.

b. *Use of Content.*

- i. ORA may use the account information, Content, and information ORA collects from Customer's use of the Software and the Site (collectively, "Information") as follows:

1. To investigate and verify proper conduct at the Site and to monitor the security and integrity of the Site.
2. As required by law and/or in response to service of legal process, such as a court order, summons, subpoena, and the like. ORA shall use reasonable efforts to notify Customer in advance of any such disclosure.
3. For Information that is not identifiable to an individual or entity, ORA may use Information as set forth above in (1) and (2), may use aggregate and anonymous Information to enhance the Customer experience at the Site, to understand how the Site is used, to communicate with its Customers about ORA and the Site, and to analyze, develop, and promote its business.
4. For Information that is identifiable to an individual or entity, ORA may use Information as set forth above in (1) and (2), to implement this Agreement, and to communicate with Customer about the Software, the Site, and this Agreement.

- ii. Otherwise, ORA does not share or sell Information.

- iii. Customer can access its account, review the Information that is stored, and revise or delete that Information. Customer will need to email ORA a written request to delete its entire account.

- c. *SuperUsers.* A Customer (such as a governmental jurisdiction) will have only one individual designated as a Super Administrator or "SuperUser." A SuperUser is the medicolegal officer (medical examiner or coroner) of the Customer jurisdiction. The SuperUser will have the sole ability to "activate" and "delete" its delegates under the account established with ORA. The Customer may change the identity of its SuperUser.

- d. *Responsibility for Account.* Upon registering for an account, each User will receive a password and an account designation. Customer acknowledges and agrees that Customer, and not ORA, is responsible for Customer's account and all activities occurring in connection with the use of that account, whether or not User authorizes such activities.
- e. *Indemnification.*
  - i. Customer acknowledges that its account with ORA and its access to the Software and Site is based upon the truth of the promises, statements, and representations made in this Agreement, including the terms of this Section 4. Customer hereby indemnifies, holds harmless, and agrees to defend ORA against all damages, losses, judgments, penalties, expenses, costs, and fees (including reasonable attorneys' fees) incurred by, or awarded or assessed against ORA in connection with any third party (including domestic or foreign governments or agencies) assertion inconsistent with the promises, statements, representations, and warranties. This obligation survives termination of this Agreement.
  - ii. In addition to the obligation of indemnification, above, Customer agrees to use its best efforts to assist ORA in the investigation and resolution of any third party claim or assertion inconsistent with Customer's representations and warranties. Customer agrees to provide such assistance at no charge and promptly upon receipt of notice from ORA of such claim or assertion.

## **5. Access; Uptime, Security; Release of Liability.**

- a. *Importance of Content Backup.* Customer is responsible for downloading and backing up copies of all its Content on a regular basis to ensure that it always has access to its own Content. Although ORA has designed the Site to enable uptime of over 98%, ORA relies upon third parties for power, data storage, server access, software maintenance, system troubleshooting, system security, and other technology services.
- b. *Release of Liability.* ORA agrees to use reasonable measures to support the operation of the Site and provide security for the Content. The Site will occasionally be down (and the Content inaccessible) for testing, upgrading, and maintenance. ORA does not represent that the Site will always be accessible or that Content is 100% secure. Customer hereby releases and agrees not to sue ORA for any loss of Content, inability to access Content, or other damages or claims arising from or relating to the Site and the Software.

- 6. Trial Period; Acceptance/Rejection.** Customer has thirty (30) days to use the Software and determine if the Software meets Customer's needs. If Customer does not notify ORA in writing within those thirty (30) days that it is rejecting the Software, then the Software has been ACCEPTED and Customer is responsible for payment of the license fees. If Customer

rejects the Software, this Agreement is terminated; Customer has no rights to access the Software or stored Content and ORA has no further obligation to Customer. Content will be deleted in the course of the operation of the Site.

- 7. AS-IS Warranty.** CUSTOMER AGREES THAT THE THIRTY (30) DAY TRIAL PERIOD IS ADEQUATE TO TEST THE SOFTWARE. ACCORDINGLY, ORA PROVIDES THE SOFTWARE “AS IS,” WITH NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ORA does not warrant that the functions contained in the Software will meet Customer’s specific requirements, the requirements of Customer’s particular industry, will be error-free, or operate without interruption. ORA will use commercially reasonable efforts to correct bugs and maintain the Software.
- 8. Sole and Exclusive Remedies.** The remedies provided in Section 7 are the sole and exclusive remedies provided to Customer under this Agreement and are in lieu of all other remedies by contract, by law, and at equity.
- 9. Intellectual Property Rights.**

  - a. *ORA Intellectual Property.* ORA retains all intellectual property rights in the Software, including copyrights, trade secrets, trademarks, patents, and “know-how.” Customer is granted a limited license to access the Software through the Site and is not granted any right to download the Software, create derivative works, or permit third party access to the Software.
  - b. *Customer Content and Data.* Customer retains the rights applicable to its Content and to data generated through Customer’s use of the Software. Customer grants ORA permission to use the data relating to the Content for any lawful business purposes, provided that the data is used either in the aggregate or in a manner that does not otherwise publicly identify Customer, the subjects of investigations, or any nonpublic information. This license is irrevocable, royalty-free, worldwide, and transferable.
  - c. *Third Party.* The Site and the Software may refer to third parties (by name, trademark, links, and the like). ORA makes no representation or warranty regarding such third party products or services and makes no assertion of a business relationship, affiliation, endorsement, or sponsorship by such third parties unless expressly stated on the Site.

## **10. Term; Fees and Payments.**

- a. *Subscription Basis.* Software access is provided on a subscription basis. Customer shall pay the applicable Software license fees (see [mdilog.com/pricing](http://mdilog.com/pricing) or Exhibit A), including fees based upon the number of individuals within Customer who have access to the Software and the data storage needs applicable to Customer. ORA may adjust fees from time to time, with advance notice to Customer.
- b. *Base Services and Additional Services.* Certain services are provided as part of the “base” subscription and other features (*e.g.*, automated data transfer from MDILog to organ donation agencies, data export for automated upload into State/County death certificate data) are provided for an additional fee. For Customers with SuperUsers, only a SuperUser can order such additional features.
- c. *Term; Renewal.* Customer shall select the term of the Software license (quarterly, yearly). The term shall automatically renew unless either party gives written notice to the other at least ten (10) days prior to end of the then-current term of an intent not to renew, or unless terminated in accordance with Section 13. If Customer uses a credit card for payment of its Software license fee, it hereby authorizes ORA to charge such card for each term of use.
- d. *Additional Services.* Customer may purchase additional services from ORA at the then-current hourly, *per-diem*, or per-project rate. Customer shall pay all travel and living expenses of ORA representatives associated with any meetings, implementation, training, technical support, or other on-site visits. ORA may request that Customer prepay travel expenses. If ORA investigates any Customer technical problems with the Software and the problem is found to be caused by operator error, unauthorized modification, tampering, or other cause not inherent in the Software, ORA reserves the right to charge for its services at its then-current technical service rates.

**11. Limitation of Liability for Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ORA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, BUSINESS INTERRUPTION LOSSES, OR LOSS OF DATA, RESULTING FROM THIS AGREEMENT, ACTIVITY AT THE SITE, THE OPERATION OF THE SOFTWARE, OR ACTIONS BY THIRD PARTIES, REGARDLESS OF THE THEORY OF LIABILITY, INCLUDING EXPRESS CONTRACT, IMPLIED CONTRACT, NEGLIGENCE, WARRANTY, OR MISREPRESENTATION, AND WHETHER OR NOT ORA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIRECT DAMAGES ARE LIMITED TO THE AMOUNT OF THE SOFTWARE LICENSING FEES PAID IN THE PREVIOUS TWELVE (12) MONTHS. As used in this section, “ORA” includes ORA, its officers, directors, employees, contractors, agents, affiliates, related business entities, successors, and assigns.

**12. Integrity of the Site.** Customer shall not take any action to interfere with the operation of the Software or the Site, to attempt to copy its underlying technology, to upload other computer

programs, or copy Content other than Customer Content. Customer agrees not to use any automated software (crawlers, robots, bots, spiders, extractors, etc.) at the Site; circumvent, disable or otherwise interfere with security-related features or digital rights management functions at the Site; or hack, reverse engineer, or disable any technology at the Site.

### **13. Termination of Services; Termination of Agreement.**

- a. *Suspension of Access to Content.* In the event of a material breach that is uncured, response to legal process, concern for the integrity of the Site, reasonable suspicion of improper conduct at the Site, or other good faith belief, ORA may suspend or terminate an account, remove or limit access to Content, or limit services to which an account holder has access, and shall use reasonable efforts to provide prior notice to an account holder.
- b. *Material Breach.* Either party may terminate this Agreement if there is a material breach by the other that is not cured within thirty (30) days after receipt of written notice of such breach. Without limitation, failure to pay fees when due, and/or use of the Software inconsistent with this Agreement, and/or information or conduct inconsistent with Customer's representations and warranties, are material breaches. Upon termination, Customer is responsible for ensuring that it has possession of its Content and all data generated by it in connection with the use of the Software. Termination shall not affect the obligation of Customer to pay any fees and expenses owing as of the date of termination.
- c. *Customer Termination Without Breach.* At any time, Customer may terminate its account, cease using the Software, or delete account information. Customer may take such actions with or without prior notice to ORA and without any liability to ORA other than payment of Software license fees through the date of termination or the applicable licensing period, whichever is longer.
- d. *Termination of Access.* Upon termination of this Agreement ORA may block access to or delete uploaded Content.
- e. *Survival.* The following Sections survive termination: 4(e), 5(b), 7-9, 11, 14.

### **14. The Site and Software are Located in and Delivered from Big Rapids, Michigan, USA.**

This Agreement is entered into, performed in, and based in Big Rapids (Mecosta County), Michigan, USA. The Site does not give rise to personal jurisdiction over ORA, either specific or general, in jurisdictions other than Michigan. This Agreement shall be governed by the internal substantive laws of the State of Michigan, without respect to its conflict of laws principles. Any claim or dispute between Customer and ORA that arise in whole or in part from the Software or this Agreement shall be decided exclusively by a court of competent jurisdiction located in (or having jurisdiction over) Big Rapids, Michigan.

**15. No Implied Waiver.** No waiver by ORA shall be implied. Any waiver of any term of this Agreement must be in writing and signed by an officer of ORA.

**16. Severability.** If any portion of this Agreement is found to be unenforceable, such portion will be modified to reflect the parties' intent set forth in such portion and only to the extent necessary to make it enforceable. The remaining provisions of this Agreement will remain in full force and effect.

**17. International Considerations.** ORA makes no representations that the Site or Software is appropriate or available for use in locations other than the United States. Those who access or use the Site or use the Software from outside the U.S. do so at their own volition and are responsible for compliance with applicable laws.

**18. Assignment.** ORA may assign, subcontract, delegate, and transfer its rights and obligations under this Agreement to a third party. Customer may not assign or transfer its account.

**19. Notices.** ORA may provide Customer with notices, including those regarding changes to ORA's Software License Agreement, by email, first class mail, or postings to the Site. Notice is deemed given upon the earlier of (i) actual receipt, (ii) twenty-four (24) hours after an email is sent, (iii) three (3) days after first class mail is deposited with the U.S. Postal Service, or (iv) thirty (30) days after a notice is posted to the Site.

**20. Force Majeure.** It shall not be a material breach of this Agreement, and neither party shall be liable to the other, if prevented from performing its duties or responsibilities under this Agreement by reason of any fire or other casualty, acts of God, earthquake, floods, explosions, interrupted power supply, sabotage, war, riots, acts of terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; strikes, court orders, laws, regulations, or orders of government or military authorities; or any other cause not within the control of such party whose performance is delayed.

**21. Option to License Software Copies.** If Customer desires to license a copy of the Software to reside on Customer's own servers, please contact ORA for license terms and fees

**AGREED AND ACCEPTED:**

Occupational Research and Assessment, Inc.,

\_\_\_\_\_   
*Customer Legal Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Printed Name*

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*Title*

\_\_\_\_\_  
*Title*

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**OCCUPATIONAL RESEARCH AND ASSESSMENT, INC.  
SOFTWARE LICENSE AGREEMENT  
Exhibit A: Pricing**