



## Micromine Origin & Beyond Software Licence Agreement

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This is a licence agreement and not an agreement for sale. This licence agreement (Agreement) is a legal agreement between you and the company, organisation or party on whose behalf the Software is used (Licensee), and Micromine Australia Pty Ltd (Licensor).

Licensor provides this program and licenses its use. By signing a Proposal or otherwise using "Micromine Origin & Beyond" Software, Licensee acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

### Definitions

The expressions below have the following meanings in this Agreement:

"Annual Licence Support and Maintenance Fee (ALF) " means an annual fee for the right to access technical support and certain Software enhancements.

"Computer" means a personal computer, tablet, mobile device or other electronic device running a Software compatible operating system.

"Current Version" means the version of the Software being sold by Licensor at a particular point in time.

"Documentation" means any user manuals, reference/training manuals or online help, either in hard copy or electronic format, provided with the Software.

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, relating to the Software and Documentation.

"The Licence" or "this Licence" means the right to use the Software in accordance with the terms of this Agreement.

"Licensee" means you and any legal entity that obtained the software and on whose behalf it is used; for example, your employer.

"Licensor" means Micromine Australia Pty Ltd ABN 72 630 329 118 (Licensor), being either owner of all intellectual property rights in the Software and documentation, or having the right to grant Licences of the Software.

"M.ALF Licence" means a right to use the software that remains contingent on the Licensee continuing to pay ALF when it becomes due and in accordance with the terms of this Agreement.

"Prohibited Jurisdiction" means Russia, the Democratic People's Republic of Korea, Iran, Syria, Libya, or other sanctioned jurisdiction(s) as nominated by the Licensor from time to time.

"Proposal" means a proposal document setting out the Software and / or products that Licensor offers to Licensee along with, where relevant, the price payable to Licensor for that Licence.

"Single User Licence" means a Licence to use the Software on a single Computer.

"Software" means the Micromine Origin & Beyond Software program modules that are made available to the Licensee by the Licensor.



"Network User Licence" means a specified number of Single User Licences running on the same local or wide area network.

#### Grant of Licence

In consideration of the Licence Fees:

**a. Licence to Use Software**

Licensor hereby grants the Licensee, either (depending on what is purchased) a:

**i. Perpetual Licence**

A non-exclusive, perpetual Licence to use the Software for itself. This Licence takes effect on the date the Software is installed or 28 days after the order date, whichever is earlier. It will remain in force until terminated;

**ii. Subscription Licence**

A Licence may be sold on a periodic basis (**Subscription Licence**) allowing use within a defined period. A Subscription Licence is not perpetual and the grant of Licence is limited to the period agreed between the parties. The period may be extended at any time by the agreement of the parties; or,

**iii M.ALF Licence**

A non-exclusive Licence to use the Software for itself. This Licence takes effect on the date the Software is installed or 28 days after the order date, whichever is earlier. It will remain valid and in force only as long as ALF is paid when due or until otherwise terminated – after which there is no right to use the Software.

**b. Right to Duplicate Software and Documentation**

Licensee must not copy the Software, in whole or in part, except as set out in this Agreement.

Licensee may duplicate the Software for the purpose of backups or for in-house education, training and testing. Licensee may duplicate all manuals and other Documentation provided by Licensor for use solely in conjunction with the licensed use of the Software under the terms of the Agreement.

In making any such copies, Licensee agrees that any copyright, trademarks and other proprietary notices on the originals will be reproduced in the copies. Licensee acknowledges such copies as the property of Licensor. Licensee shall make commercially reasonable efforts to ensure any copy of the licensed Software made pursuant to the Licence bears notice of Licensor's ownership of copyright and a notice stipulating that the licensed Software contains information confidential to Licensor. Licensee shall comply with any reasonable directions of Licensor as to the form or content of such notices. Licensee must notify Licensor immediately on becoming aware of any unauthorised use or copying of the whole or any part of the Software or Documentation.

**c. Right to Delegate to Outsourcing Service Providers**

Licensee may delegate to an independent computer and/or telecommunication services provider (such as but not limited to an outsourcer, an application service provider, facility manager or a hosting service provider) any of the rights granted to Licensee in this Licence. Licensee agrees to require such services provider to use the copy of the Software that Licensee provides to it solely for the provision of services or processing of data relating to the business of Licensee and its affiliates.

**d. Right to Delegate to Disaster Recovery or Business Continuity Service Providers**

Licensee may delegate to an independent computer services provider that provides services for disaster recovery, business continuity or security access control any of the rights granted to Licensee in this Licence. Licensee agrees to require such service providers to use the copy of the Software that Licensee provides to it solely for the processing of data relating to the business of Licensee and its affiliates.

#### Licence Types



A Single User Licence entitles a user to use the Software on any one computer. The Licence may be transferred to another computer as long as it is only used on one computer at a time.

A Network User Licence entitles a number of users to use the Licensed Software concurrently, provided:

- a. the relevant security device or licence file is installed on the client computer accessing the licensed network;
- b. the relevant security device is installed on the network licence server with the licence server software installed;
- c. the user's computer can connect to the network server; and
- d. the number of concurrent users does not exceed the number of purchased network licences.

## **Intellectual Property**

Licensor is the owner of the Software. Licensee acknowledges that there is no transfer of title or ownership to Licensee of the Software or the Documentation or any modifications, service packs or new releases of the Software. The Software, Documentation and any associated modifications, changes, improvements and enhancements, regardless of whether made by Licensee or Licensor, are the property of Licensor and Licensee shall have no rights except as provided for in this Agreement. The Licence and Agreement shall apply to the Software as modified or altered.

Licensee is the owner of any and all output data from the Software.

## **Transfer**

Licensee may not make the Software or Documentation available to any third-party by way of a gift, loan, sub-licence, assignment, novation, mortgage, encumbrance or hire, except as set out in this Agreement.

The Licence is non-transferable, except to affiliates or successors-in-interest via merger, acquisition, divestiture, reorganization, or otherwise. For all other transfers, written consent of Licensor is required. A transfer fee for any transfer other than the transfer between a Licensee owned office or project shall apply. All transfers are subject to correct completion of the relevant Licensor transfer form.

## **Modification**

Licensee may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law.

Licensee shall not modify or alter the Software or merge all or any part of the licensed Software with any other software without Licensor's prior written permission.

If the Software is modified or altered by Licensor at Licensee's request, or by Licensee with the permission of Licensor pursuant to this Licence, the costs associated with the modifications or alternations or the costs arising out of the investigation of the effects of proposed modifications or alternations will be borne solely by Licensee.

The Software as modified or altered remains the property of Licensor in all respects, whether modified by Licensee, Licensor or a third party and whether or not authorised pursuant to the Licence. Specifically, Licensee shall if necessary assign to Licensor all Intellectual Property Rights arising out of any modifications to the Software.

This Licence shall apply to the licensed Software as modified or altered.

## **Security**

Except for Licensor and its employees, Licensee shall be solely responsible for the use, supervision, management and control of the Software security device or licence file and Documentation.



Licensee shall make commercially reasonable efforts to ensure that the Software, security device or licence file and Documentation are protected at all times from theft, misuse, damage, destruction or any form of unauthorised use.

Software may contain functionality requiring periodic validation of the Licence via internet connection and communication to Licensor. Licensee must not interfere with this process. Licensor reserves the right to disable Software that is not re-validated in accordance with this process or is determined to be an unauthorised copy or for other breach of this Agreement.

#### **Software Warranty**

Licensor warrants it has the right and authority to grant the Licence.

Licensor warrants the media upon which the Software is supplied to be free from defects, under normal use, for a period of ninety (90) days from the date of purchase. Licensor will replace any defective media if returned within ninety (90) days after purchase.

Licensor warrants that the Software will perform substantially in accordance with its specifications for a period of ninety (90) days from the date of purchase. The foregoing warranty is void if failure of the Software is from accident, abuse or misapplication. Licensor's sole obligation and Licensee's exclusive remedy under this warranty, shall be, at Licensor's option, to either return the price paid, or to repair or replace the Software that fails to meet the limited warranty.

Licensor does not warrant that the functions contained in the Software will meet Licensee's requirements, or that the operation of the Software will be uninterrupted or error free. Licensor offers no warranty regarding the performance of the Software.

#### **Limitation of Liability**

Licensor will not be held responsible for any loss, damages, claims or costs whatsoever, including any consequential, indirect or incidental damages, lost profits, lost savings, business interruption, lost data or files or damage to property caused by Licensee's use of the Software, or its inability to use the Software.

Licensor's total liability to Licensee, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement, shall be limited to the Licence fees paid in the period which is 12 months prior to the date on which the event giving rise to the liability first arose.

Licensor does not exclude liability for personal injury or death to the extent caused by the negligence of Licensor or any other liability that may not be excluded by law.

Licensor shall not be responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the Software.

Any condition or warranty which would otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is excluded to the extent permissible by law.

#### **Corporate Agreement, Sales Contract and Software Licence Agreement**

The terms of this Agreement apply to the exclusion of any other terms that the Licensee seeks to impose or incorporate (including any terms or conditions contained in any correspondence, purchase order, vendor terms or other documentation from the Licensee), or which are implied by trade, custom, practice or course of dealing. Any terms or conditions attached to any purchase order issued by the Licensee in respect of the Software (other than this Agreement) will not form part of the Agreement unless such conditions are expressly accepted by the Licensor in writing.



These terms may be superseded by the terms in an executed corporate agreement or sales contract between the Licensor and Licensee if explicitly stated as superseding this Agreement. These terms, unless expressly stated otherwise, are incorporated as complimentary to, but secondary to the extent of any inconsistency, a written software licence agreement.

#### **Annual Licence Support and Maintenance Fee – Perpetual Licence**

Licensor offers an ALF program which entitles users to access software upgrades, technical support and software maintenance, in return for an annual fee.

The first year ALF is compulsory. Thereafter, the ALF program can be optionally purchased. Licensor shall not be obliged to support the Software, whether by providing advice, training, modifications, new releases or enhancements or otherwise should the Software not be covered by a valid paid up ALF. Additionally, the Software will be locked to the version at the date of the ALF program expiry.

Licensor reserves the right to charge for new Software modules which shall not be included in the ALF program.

A Licence renewal notification will be sent to Licensee by Licensor two (2) months in advance of the expiry and then one month prior to the expiry of the current licence program period.

#### **Annual Licence Support and Maintenance Fee – M.ALF Licence**

For the M.ALF Licence, annual licence support and maintenance is mandatory and a condition of the continuing right to use the Software. ALF must be paid when it becomes due in order for the M.ALF Licence to remain valid.

The ALF program for the M.ALF Licence entitles users to:

- a. technical support;
- b. upgrade the Software to the version that on each anniversary of the date the Licence takes effect is the Current Version; and
- c. software maintenance only for the duration the version in use by the Licensee is the Current Version.

Licensor reserves the right to charge for new Software modules and for those modules to also require maintenance and the payment of a respective ALF.

A Licence renewal notification will be sent to Licensee by Licensor two (2) months in advance of the expiry and then one month prior to the expiry of the current licence program period.

#### **Access and Safety**

Licensee shall, where relevant, ensure Licensor's personnel have full and safe on site access to the Software at all reasonable times for the purpose of providing the software support. Licensee shall also ensure that Licensor's personnel are provided with all information, facilities, assistance and accessories reasonably required by Licensor to enable Licensor to comply with its obligations under this Agreement.

If reasonably requested by Licensor, Licensee shall provide a suitably qualified or informed representative to provide such advice or assistance to those personnel as may be necessary in order to enable Licensor to access the Software and any relevant computer equipment for the purposes of timely support.

The Licensee will not access, use, or (directly or indirectly) allow use, of the Software in, from, or for the benefit of any party in a Prohibited Jurisdiction and the Licensor reserves the right to terminate this Agreement and the Licensee agrees to forfeit any payments made to the Licensor if the Licensee breaches this provision.



## Telemetry Information

Licensor may remotely collect anonymous user usage telemetry information from Licensee. This includes things like which dialogs users open, how long they spend there, which toolbar icons they use etcetera. It does not include any user project data.

The usage information is used to perform analytics, with the intention of applying the derived knowledge to make the product better and improve the user experience.

Licensor is committed to ensuring the privacy of users. Any information collected and used is done in accordance with Licensor's Privacy Policy which may be viewed at: <https://www.micromine.com/privacy-policy/>.

Licensee may opt out of providing user usage telemetry information by going to *Help | Send Feedback | Settings*.

## Taxes

Licensee shall be solely responsible for payment of any taxes (including sales or use taxes, intangible taxes, withholding taxes and property taxes) resulting from purchase of the Licence and Licensee's possession and use of the Software.

## Termination

Licensor may terminate this Agreement immediately if:

- a. Licensee is in breach of any term of the Agreement;
- b. Licensee for any reason destroys or disposes of or loses custody of the Software;
- c. Licensee becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- d. Licensee, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- e. Licensee ceases or threatens to cease conducting its business.

If this Agreement is terminated pursuant to this clause, Licensor may, in addition to terminating the Agreement:

- f. repossess any copies of the Software and security devices in the possession, custody or control of Licensee;
- g. retain any moneys paid; and
- h. be regarded as discharged from any further obligations under the Agreement.

Licensee may terminate this Licence at any time by destroying the Software and Documentation together with all copies. If for any reason Licensee's right to use the Software terminates, Licensee must remove and destroy all copies of this Software and Documentation, and return any hardware security device associated with the Licence to Licensor. Licensee shall not be entitled to a refund or part thereof should Licensee exercise its rights under this clause.

Licensor shall be legally entitled to suspend or terminate this Agreement if payment is not made in full by Licensee for the software or for any unpaid Licensor invoice not in dispute which remains outstanding longer than 90 days.

Licensor shall be entitled to disable use of the Licence by the Licensee if Licensee engages in any misuse of the software including, but not limited to, disabling copy protections or making the Software licence available for download by third parties in breach of this Agreement.

M.ALF Licences will terminate automatically if ALF is not paid when due, along with the right to use the Software.



### General Provisions

The above terms and conditions supersede any prior arrangement, oral or written, between Licensee and Licensor relating to the Licence and use of the Software and constitutes the entire agreement between Licensor and Licensee, with the exception of the circumstances set out in the *Corporate Agreement, Sales Contract and Software Licence Agreement* term above.

Licensor may modify the terms of the Agreement from time to time and will notify the Licensee by email or by posting a notice on [www.micromine.com](http://www.micromine.com). For Licensees with a Subscription Licence, continued use of the Software following any such modification constitutes acceptance of the modified terms. If the Licensee doesn't agree to the modified terms, it may cancel the Subscription Licence and the Licensor will provide a pro rata refund for the remaining licence term. For all other Licence holders, the modified terms will have effect from the time the next major version release is installed and the Licensee clicks their acceptance. If the Licensee doesn't agree to the modified terms, it may continue using its current major version release on the existing terms.

This Agreement shall be construed, interpreted and governed by the laws of the state of Western Australia.

If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

The covenants, conditions and provisions of the Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

Any express statement of a right of Licensor under this Agreement is without prejudice to any other right of Licensor expressly stated in this Agreement or existing at law.

By clicking "accept" and proceeding with installation of the Software you are representing you are a duly authorised member of the Licensee organisation or company's personnel and have the authority to bind that organisation or company to this Agreement.