Terms of Service

Encodian Flowr - Dedicated

Last updated: 26th September 2023

encodian

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Action: means a single use of an "Encodian action" as described by Encodian online linked to [here](#).

Action Limit: means the cap on the number of Actions the Customer's Authorised Users may perform per month as offered by Encodian and accepted by the Customer when the Customer placed its order for the Services.

Applicable Data Protection Laws: all applicable data protection laws and regulations in any jurisdiction.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

Business: the business of the Customer as at the Commencement Date.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date on which the Customer submits the Order Acceptance Form to Encodian.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of Encodian's information), information pertaining to customers, pricing and marketing information relating to the Services or any of its constituent parts and the Software or any of its parts.

Contract Year: means a 12 month period commencing with the Commencement Date or any anniversary of it.

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company.

Customer: the organisation that uses the Services having paid Encodian the Subscription Fees.

Customer's Server: the Customer's Microsoft Azure tenant where the Software will be hosted as directed by the Customer.

Documentation: any operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied or made available by Encodian in connection with the Services.

Encodian: means Encodian Solutions Limited, a company incorporated in England and Wales under company number 10200243 and having its registered office at Blythe Valley Innovation Centre Central Boulevard, Blythe Valley Business Park, Solihull, England, B90 8AJ.

Encodian's Acceptable Use Policy: Encodian's Acceptable Use Policy for the Customer's use of the Software made available to the Customer by Encodian online linked to here.

Hosting Services Contract: a contract entered into between the Customer and the Third Party Hosting Provider for the Third Party Hosting Provider to host the Software on the Customer's Servers.

Initial Subscription Term: the initial term of 1 year offered by Encodian and accepted by the Customer when the Customer placed its order to use the Services.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Open-Source Software: any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's open source definition from time to time.

Order Acceptance Form: the online form that Encodian may provide to the Customer that the Customer must click to accept and submit to Encodian to enter into this agreement.

Permitted Purposes: has the meaning given in clause 11.1.

Renewal Period: a renewal period as defined in clause 13.1.

Services: the subscription services for the provision of access to and use of the Software as more particularly described in the Documentation.

Software: the online software applications offered by Encodian in connection with the Services and accepted by the Customer when the Customer placed its order to use the Services, as more particularly described in the Documentation and any modifications made by Encodian to the same including any updates, new release or, new versions.

Subscription: the subscription purchased by the Customer from Encodian which entitles Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Subscription Fees: the subscription fees payable by the Customer to Encodian for the Subscription offered by Encodian and accepted by the Customer when the Customer placed its order to use the Services.

Subscription Term: the Initial Subscription Term and any subsequent Renewal Periods.

Third Party Hosting Provider: a third party hosting services provider contracted with the Customer to host the Software.

Third Party Software: the software programs proprietary to third parties which are provided to the Customer in connection with this agreement including amendments, updates, modifications, new versions and new releases made to the same.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

1.2   Clause and paragraph headings shall not affect the interpretation of this agreement.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6   A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.8 A reference to writing or written excludes fax but not email.

1.9 References to clauses are to the clauses of this agreement.

1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. ACCESS RIGHTS

2.1 Subject to the Customer paying the Subscription Fees in accordance with this agreement, Encodian hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences:

(a) to permit the Authorised Users to access and use the Software and the Documentation, on a single Microsoft tenant, during the Subscription Term, as applicable, solely for the Customer's own internal operational purposes related to the Business; and

(b) to permit the Third Party Hosting Provider to host the Software.

2.2 Encodian shall provide or make available to the Customer from time to time copies of the Documentation containing information for the proper use of the Services. Such Documentation may be supplied in electronic form.

2.3 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Services and for training the Customer's personnel in use of the Services. The Customer shall ensure that all Encodian's proprietary notices are reproduced in any such copy.

2.4 The Customer may provide copies of the Documentation to any third party referred to in clause 11.3 who needs to know the information contained in it for the Permitted Purpose.

2.5 The Customer shall not and shall ensure that its Authorised Users and its Third Party Hosting Provider shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b)   access all or any part of the Software, the Services or the Documentation in order to build a product or service which competes with the Software, the Services or the Documentation; or

(c)   use the Software, the Services or the Documentation to provide services to third parties; or

(d)   subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Services or the Documentation available to any third party except the Authorised Users, or

(e)   attempt to obtain, or assist third parties in obtaining, access to the Software, the Services or the Documentation, other than as provided under this clause 2.

2.6   The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software, the Services and the Documentation and, in the event of any such unauthorised access or use, promptly notify Encodian.

2.7   The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

3.   SERVICES AND SOFTWARE DELIVERY

3.1   Encodian shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

3.2   Encodian shall provide the Services to the Customer to enable the Customer to carry out Actions up to the Action Limit.

3.3   The Software shall be hosted by the Customer or its third party service provider in the Customer's Server.

3.4   The parties shall cooperate with each other to facilitate the delivery of the Software to the Customer's Server at the time agreed between the parties.

4.   SUBSCRIPTION LEVELS AND ADDITIONAL ACTIONS

4.1   The Customer may at any time, change their Subscription to one which offers a greater number of Actions than its current Subscription.

4.2   The Customer may not change their Subscription to one which offers a lesser number of Actions than its current Subscription until the expiry of their current Subscription.

4.3   The Customer may purchase additional Actions while remaining on its current Subscription at any time.

4.4   The Customer shall not be entitled to any refund, rebate or discount from Encodian as a result of changing its Subscription, even though, for example, the Customer paid in advance for a Subscription with a greater number of Actions than the Subscription the Customer changed to.

5.   DATA PROTECTION

Each party shall comply with all Applicable Data Protection Laws in connection with the supply, receipt and use of the Software.

6.   ENCODIAN'S OBLIGATIONS

6.1   Encodian undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2   The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services or the Software contrary to Encodian's instructions or the Documentation, or modification or alteration of the Services or the Software by any party other than Encodian or Encodian's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Encodian will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.

6.3   Encodian

(a)   does not warrant that:

(i) the Customer's use of the Services or the Software will be uninterrupted or error-free; or

(ii) that the Services, the Software, the Documentation and/or the information or functionality obtained by the Customer through the Services will meet the Customer's requirements; and

(b)   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and/or the Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and

(c)   is not responsible for any delays, delivery failures, or any other loss or damage caused by the Third Party Hosting Provider.

6.4   This agreement shall not prevent Encodian from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

6.5   Encodian warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7.   CUSTOMER'S OBLIGATIONS AND INDEMNITY

7.1   The Customer shall:

(a)   provide Encodian with:

(i) all necessary co-operation in relation to this agreement; and

(ii) all necessary access to such information as may be required by Encodian,

in order to provide the Services, including but not limited to security access information and configuration services;

(b)   without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement, including Encodian's Acceptable Use Policy;

(c)   carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Encodian may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d)   ensure that the Authorised Users and the Third Party Hosting Provider use the Services, the Software and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's and/or the Third Party Hosting Provider's breach of such terms and conditions;

(e)   obtain and shall maintain all necessary licences (or sub-licences as the case may be), consents, and permissions necessary for Encodian, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;

(f)   ensure that its network and systems comply with the relevant specifications provided by Encodian from time to time;

(g)   be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Customer's Server, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

(h)   ensure that the Hosting Services Contract contains provisions that are no less protective of the Software and Encodian's Confidential Information than the provisions of this agreement and which include the right for Encodian to enforce the Hosting Services Contract;

(i) provide Encodian with a copy of the Hosting Services Contract within 5 Business Days of Encodian's request; and

(j) on Encodian's request, provide Encodian with such working credentials as required by Encodian to enable Encodian to access the Software on the Customer's Server at any time, including when this agreement expires or terminates so that Encodian can remove the Software from the Customer's Server.

7.2   The Customer shall defend, indemnify and hold harmless Encodian against claims actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software and/or Documentation, save to the extent that such claims, actions, proceedings, losses, damages, expenses and costs arose as a result of Encodian's wrongful acts or omissions.

8.   CHARGES AND PAYMENT

8.1 The Customer shall pay the Subscription Fees to Encodian for the provision of the Services in accordance with this clause 8.

8.2 Encodian shall invoice the Customer for the Subscription Fees yearly in advance.

8.3 If the Customer fails to make any payment due to Encodian under this agreement by the due date for payment, then, without limiting Encodian's remedies elsewhere under this agreement or in law:

(a) the Customer shall pay interest on the overdue amount at a monthly rate of 1.5%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

(b) Encodian may, without liability to the Customer, disable the Customer's and the Authorised Users' passwords, accounts and access to all or part of the Services and Encodian shall be under no obligation to provide any or all of the Services while the relevant payments due remain unpaid.

8.4 All fees stated or referred to in this agreement:

(a) shall be payable in the currency offered by Encodian;

(b) are non-cancellable and non-refundable; and

(c) are exclusive of VAT, which shall be added to Encodian's fees at the appropriate rate, if applicable.

8.5 Encodian shall be entitled to increase the Subscription Fees, and/or the fees payable in respect of additional Actions at the start of each Renewal Period upon 1 calendar month's prior notice to the Customer.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that Encodian and/or its licensors own all intellectual property rights in the Services, the Software and the Documentation including in the product of any development, design and/or integration work that Encodian may carry out for the Customer and including where any elements of such products were developed as a result of or using the Customer's ideas, suggestions or other feedback supplied by the Customer. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights or any other rights or licences in respect of the Services, the Software and/or the Documentation or the product of any development, design and/or integration work that Encodian may carry out for the Customer.

9.2 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that Encodian may consider necessary or desirable to perfect the right, title and interest of Encodian in and to the Intellectual Property Rights in the Services, the Software and the Documentation.

9.3 The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Services, the Software and/or the Documentation and shall promptly report to Encodian any such infringement that comes to its attention. In particular, the Customer shall:

(a) ensure that each Authorised User, before starting to use the Services, is made aware that the Services, the Software and the Documentation is proprietary to Encodian or third parties and that they may only be used in accordance with this agreement; and

(b) not permit any person other than an Authorised User to have access to the Services, the Software and/or the Documentation without the prior written consent of Encodian, who may require that such third party executes a written confidentiality agreement before being given access to any of the same.

10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

10.1 Encodian shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Software or Documentation, provided that, if any third party makes a claim, or notifies an intention to make a claim against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (IPR Claim), the Customer:

(a) as soon as reasonably practicable, gives written notice of the IPR Claim to Encodian, specifying the nature of the IPR Claim in reasonable detail;

(b) does not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of Encodian (such consent not to be unreasonably conditioned, withheld or delayed);

(c)   gives Encodian and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Encodian and its professional advisers to examine them and to take copies (at Encodian's expense) for the purpose of assessing the Claim; and

(d)   subject to Encodian providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as Encodian may reasonably request to avoid, dispute, compromise or defend the IPR Claim.

10.2   Without prejudice to clause 10.3, Encodian shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

(a)   caused or contributed to by the Customer's use of the Software in combination with software not supplied or approved in writing by Encodian; or

(b)   based on use of any version of the Software other than the latest version supplied by Encodian, if such claim could have been avoided by the use of such supplied version.

10.3   If use of the Software becomes, or, in the opinion of a UK lawyer of at least ten years call, is likely to become, the subject of any IPR Claim, Encodian may:

(a)   replace all or part of the Software with functionally equivalent software or documentation without any charge to the Customer;

(b)   modify the Software as necessary to avoid such claim, provided that the Software (as amended) functions in substantially the same way as the Software before modification; or

(c)   procure for the Customer a licence from the relevant claimant to continue using the Software.

10.4   If:

(a)   use of the Software is determined in a court of law to be infringing;

(b)   Encodian is advised by a lawyer qualified under the law applicable to the alleged infringement of at least ten years' call that the Customer use of the Software and/or the Documentation in accordance with this agreement is likely to constitute infringement of a third party's rights; or

(c)   an injunction or similar order is granted in connection with any claim falling within the scope of clause 10.1 which prevents or restricts the Customer's use of the Software and/or the Documentation in accordance with this agreement,

and Encodian is unable, after best efforts, to procure for the Customer the right to continue using the Software, or to provide the Customer with functionally equivalent non-infringing software, this agreement will be terminated.

10.5   Notwithstanding any other provision in this agreement, clause 10.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open Source Software or Third Party Software.

10.6   Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

11.   CONFIDENTIALITY

11.1   Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this agreement (Permitted Purposes).

11.2   In relation to the Customer's Confidential Information:

(a)   For the duration of this agreement and for a period of seven years thereafter, Encodian shall treat as confidential all Confidential Information of the Customer supplied under this agreement. Encodian shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. Encodian shall ensure that its employees are aware of, and comply with, this clause 11; and

(b)   Encodian may provide any of its subcontractors with such of the Customer's Confidential Information as they need to know for the Permitted Purposes, provided that each relevant subcontractor has first entered into a written obligation of confidentiality owed to Encodian in terms similar to clause 11.2(a).

11.3   In relation to Encodian's Confidential Information:

(a) For the duration of this agreement and for a period of seven years thereafter, the Customer shall treat as confidential all Confidential Information of Encodian contained or embodied in the Software or Documentation, or otherwise supplied or made available to the Customer during the performance of this agreement; and

(b) the Customer shall not, without the prior written consent of Encodian, divulge any part of Encodian's Confidential Information to any person other than the Authorised Users or the Third Party Hosting Provider who need to know it for the Permitted Purposes.

11.4 The Customer undertakes to ensure that the persons referred to in clause 11.3(b) are made aware, before the disclosure of any part of Encodian's Confidential Information, that the same is confidential and that they owe a duty of confidence to Encodian in terms similar to clause 11.3(a) (which the Customer shall ensure is adhered to).

11.5 The restrictions imposed by clause 11.1, clause 11.2 and clause 11.3 shall not apply to the disclosure of any Confidential Information which:

(a) is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 11;

(b) before any negotiations or discussions leading to this agreement was already known by the receiving party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or

(c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

11.6 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Software becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

11.7	No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or any court or other authority of competent jurisdiction.

11.8	Encodian may compile information related to the performance of the Software for the purposes of improving the Software and provided that such information does not identify any Authorised Users or personal data.

11.9	Unless the Customer requests otherwise in writing, Encodian may include the Customer's name and logo in its marketing materials and on its website.

11.10	This clause 11 shall remain in full force and effect in the event of any termination of the agreement.

## 12.	LIMITATION OF LIABILITY

12.1	Neither party excludes or limits liability to the other party for:

(a)	fraud or fraudulent misrepresentation;

(b)	death or personal injury caused by negligence; or

(c)	any matter for which it would be unlawful for the parties to exclude liability.

12.2	Subject to clause 12.1, Encodian shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

(a)	any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, production, reputation or goodwill;

(b)	any loss or corruption (whether direct or indirect) of data or information;

(c)	loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

(d)	any loss or liability (whether direct or indirect) under or in relation to any other agreement.

12.3	Clause 12.2 shall not prevent claims, which fall within the scope of clause 12.4, for:

(a)	direct financial loss that are not excluded under any of the categories set out in clause 12.2(a) to clause 12.2(d); or

(b)   tangible property or physical damage.

12.4   Subject to clause 12.1, Encodian's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall not exceed the cap.

12.5   In clause 12.4 and this clause 12.5:

(a)   Cap. The cap is one hundred per cent (100%) of the total charges in the Contract Year in which the breach of contract, tort, duty, misrepresentation or other default attributable to Encodian occurred; and

(b)   Total charges: The total charges means all sums paid to Encodian by the Customer under this agreement in the Contract Year in which the breach of this agreement, tort, duty, misrepresentation or other default attributable to Encodian occurred.

12.6   Subject to clause 12.1, Encodian shall not be liable for (and the Customer assumes sole responsibility for) the results obtained from the use of the Software and the Documentation by the Customer, and for conclusions drawn from such use.

12.7   Unless the Customer notifies Encodian that it intends to make a claim in respect of an event within the notice period, Encodian shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.   TERM AND TERMINATION

13.1   This agreement shall, unless otherwise terminated as provided in this clause 13 or clause 14, commence on the Commencement Date and shall continue for the applicable Initial Subscription Term and, thereafter, this agreement shall terminate automatically without notice at the end of the Initial Subscription Term unless, at any time prior to the end of the Initial Subscription Term (or any relevant Renewal Period agreed under this clause), the parties agree in writing that the term of this agreement shall be extended for 1 year (Renewal Period). Unless it is further extended under this clause, this agreement shall terminate automatically without notice at the end of a relevant Renewal Period.

13.2   If either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period.

13.3   If there is a change in Control of the Customer, Encodian may terminate this agreement immediately.

13.4   Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a)   the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;

(b)   the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c)   the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(d)   the other party makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed; or

(e)   the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

13.5   The parties acknowledge and agree that any breach of clause 2, clause 2.5, clause 8, clause 9 or clause 11 shall constitute a material breach of a term for the purposes of this clause.

13.6   On termination or expiry of this agreement for any reason:

(a)   all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

(b)   the Customer shall immediately pay any outstanding unpaid invoices and interest to Encodian;

(c) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(d) Encodian may destroy or otherwise dispose of any of the Customer Data in its possession; and

(e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 11, clause 12 and this clause 13 shall remain in full force and effect.

13.8 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

13.9 Notwithstanding its obligations in this clause 13 if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

14. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

15. VARIATION

15.1   Encodian may vary these Conditions from time to time on giving the Customer at least 1 calendar month's notice in writing. If the Customer does not accept the variation, the Customer may, within 1 calendar month of being notified of the variation by Encodian (Review Period), terminate this agreement on 7 Business Days' written notice to Encodian. The Customer's continued use of the Software after the Review Period will constitute the Customer's acceptance of the variation.

15.2   No other variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.   WAIVER

A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.   RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18.   SEVERANCE

18.1   If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

18.2   If any provision or part-provision of this agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19.   ENTIRE AGREEMENT

19.1   This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

19.2   Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

19.3   Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20.   ASSIGNMENT

20.1   The Customer shall not, without the prior written consent of Encodian, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20.2   Encodian may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21.   THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22.   NO PARTNERSHIP

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23.   NOTICES

23.1   Any notice required to be given under this agreement shall be in writing and shall be:

(a)   if given by Encodian:

(i) delivered by commercial courier to the Customer's registered office (if a company) or its principal place of business (in any other case); or

(ii) sent by email to the following address (or an address substituted in writing by the Customer): the email address for the Customer provided to Encodian.

(b)   if given by the Customer, sent by email to the following address (or an address substituted in writing by Encodian): admin@encodian.com.

23.2   Any notice shall be deemed to have been received:

(a)   if delivered by courier, on signature of a delivery receipt or at the time the notice is left at the proper address; or

(b)   if sent by email at the time of the transmission provided that no bounceback or out of office message is received.

23.3   This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24.   GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.   JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).