



# End User Licence Agreement

Encodian Flowr

Encodian Vertr

Encodian Trigr

Encodian Indxr

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## Please read carefully

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Encodian Solutions Limited, company number 10200243, of Blythe Valley Innovation Centre, Central Boulevard, Blythe Valley Business Park, Solihull B90 8AJ, United Kingdom (**Licensor, us or we**) for:

- a. Encodian computer software and the associated media (**Software**), made accessible to you by subscription (**User Subscription**); and
- b. online documents, available at our website online [here](#) (**Documents**).

We licence use of the Software and Documents to you on the basis of this Licence. We do not sell the Software or Documents to you. We remain the owners of the Software and Documents at all times.

**You should print a copy of this Licence for future reference.**

### IMPORTANT NOTICE TO ALL USERS:

- BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU (AND YOUR EMPLOYEES). THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 4 AND CLAUSE 5.
- IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, YOU MUST CLICK ON THE "REJECT" BUTTON BELOW AND YOU MAY NOT ACCESS THIS SOFTWARE OR DOCUMENTS.

### 1. GRANT AND SCOPE OF LICENCE

**1.1.** In consideration of payment by you of the agreed subscription fee and you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Software and the Documents on the terms of this Licence.

**1.2.** You may:

- a) download, install and use the Software for your internal business purposes only in accordance with the usage limitations of the Software, pursuant to your User Subscription, set out in the Documentation and agreed to by you;
- b) receive and use any free supplementary software code or update of the Software incorporating “patches” and corrections of errors as may be provided by us from time to time; and
- c) use any Documents in support of the use permitted under this clause 1.2 and make copies of the Documents as are reasonable necessary for its lawful use.

## 2. RESTRICTIONS

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

- a) not to copy the Software or Documents except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
- b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documents;
- c) not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
  - i. is used only for the purpose of achieving inter-operability of the Software with another software program; and

- ii. is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
  - iii. is not used to create any software which is substantially similar to the Software;
- e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- f) to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence; and
- g) not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than your employees and representatives without prior written consent from us.

### 3. INTELLECTUAL PROPERTY RIGHTS

- 3.1. You acknowledge that all intellectual property rights in the Software and the Documents anywhere in the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documents other than the right to use them in accordance with the terms of this Licence.
- 3.2. You acknowledge that you have no right to have access to the Software in source code form.

### 4. LIMITED WARRANTY

- 4.1. To the extent permitted under law, we provide no warranties (whether implied or otherwise) to you in relation to the Software or the Documents under this Licence, and all such warranties are excluded. Please refer to the agreement under which you paid the purchase price for the Software for details of any warranties provided under that agreement.

## 5. LIMITATION OF LIABILITY

5.1. You acknowledge that the Software has not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documents meet your requirements.

5.2. You agree not to use the Software or Documents for any re-sale purposes.

5.3. We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:

- a) loss of profits, sales, business, or revenue;
- b) business interruption;
- c) loss of anticipated savings;
- d) wasted expenditure;
- e) loss or corruption of data or information;
- f) loss of business opportunity, goodwill or reputation;

where any of the losses set out in clause 5.3(a) to clause 5.3(f) are direct or indirect; and

- g) any special, indirect or consequential loss, damage, charges or expenses.

5.4. Other than the losses set out in clause 5.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the licence fee. This maximum cap does not apply to clause 5.5.

5.5. Nothing in this Licence shall limit or exclude our liability for:

- a) death or personal injury resulting from our negligence;
- b) fraud or fraudulent misrepresentation; or
- c) any other liability that cannot be excluded or limited by English and Welsh law.

5.6. This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documents. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documents which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## 6. SUSPENSION AND TERMINATION

6.1. We may suspend this Licence if the organisation from which you purchased the Software breaches or may breach the agreement between us and that organisation for the duration of time that the breach remains unremedied.

6.2. We may terminate this Licence immediately by written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

6.3. On termination for any reason:

- a) all rights granted to you under this Licence shall cease;
- b) you must immediately cease all activities authorised by this Licence; and
- c) you must immediately and permanently delete or remove the Software from all computer equipment in your possession.

## 7. COMMUNICATIONS BETWEEN US

- 7.1. We may update the terms of this Licence at any time on notice to you in accordance with this clause 7. Your continued use of the Software and Documents following the deemed receipt and service of the notice under clause 7.2 shall constitute your acceptance to the terms of this Licence, as varied. If you do not wish to accept the terms of the Licence (as varied) you must immediately stop using and accessing the Software and Documents on the deemed receipt and services of the notice.
- 7.2. If we have to contact you, we will do so by pre-paid post to the address you provided in accordance with your agreement to purchase the Software.
- 7.3. Note that any notice:
- a) given by us to you will be deemed received and properly served 24 hours after it is first posted on our website; and
  - b) given by you to us will be deemed received and properly served three days after the date of posting of any letter.
- 7.4. In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice.

## 8. HOW WE MAY USE YOUR PERSONAL INFORMATION

- 8.1. Under data protection legislation, we are required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Software and the Documents and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided here at the following URL: <https://www.encodian.com/policies/privacy-policy/> and it is important that you read that information.

## 9. OTHER IMPORTANT TERMS

- 9.1. We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 9.2. You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 9.3. This Licence constitutes the entire agreement between us and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between us, whether written or oral, relating to its subject matter.
- 9.4. You acknowledge that in entering into this Licence you do 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 Licence.
- 9.5. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence.
- 9.6. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 9.7. 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.
- 9.8. Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 9.9. This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by the law of England and Wales. We both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.