



Reseller Agreement

RESELLER AGREEMENT TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in the Reseller Terms and Conditions.

Authorised Users: those employees, agents and independent contractors of the Customer, its subsidiaries and affiliates, who are authorised by the Customer to use the Encodian Software and/or the Documentation.

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 30 (Jurisdiction) inclusive and Schedule 1 to these terms and conditions.

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, and controls, controlled and the expression change of control shall be interpreted accordingly.

Customer: such entity who enters into an agreement with the Reseller for use of the Encodian Software and a EULA with Encodian and for whom the Reseller executes an Order Form.

Customer Data: the data inputted by the Customer, Authorised Users, or the Reseller on the Customer's behalf for the purpose of using the Encodian Software or facilitating the Customer's use of the Encodian Software and any data generated by, or derived from the Customer's use of the Encodian Software, whether hosted or stored within the Encodian Software or elsewhere.

Data: either or both of the Customer Data or the Reseller Data.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority applicable to the parties.

Documents: the document(s) made available to the Reseller by Encodian online [here](#) or such other web address notified by Encodian to the Reseller from time to time which sets out a description of the Encodian Software and/or the user instructions for the Encodian Software.

Effective Date: the date on which the Reseller receives confirmation in writing that Encodian accepts the Order Form submitted by the Reseller.

Encodian: the organisation supplying or making available the Encodian Software and the Documentation to Customers.

Encodian's DPA: Encodian's Data Processing Agreement made available to the Reseller by Encodian online [here](#).

Encodian's Privacy Policy: Encodian's privacy policy available online [here](#).

Encodian Software: the software applications provided by Encodian under an Order Form and any modifications made by Encodian to the same including any updates, new releases or new versions.

EULA: the end user licence agreement between Encodian and the Customer in the form set out in Schedule 1 and any amendments to the same which are notified by Encodian to the Reseller from time to time.

Force Majeure Event: means an event which is beyond the reasonable control of the party seeking to rely on such event (except to the extent such party could reasonably have avoided such event or its consequences by implementing such business continuity and/or disaster recovery measures and otherwise exercising such level of care in each case as could reasonably be expected of a party in its position.

Incident: any Vulnerability, Virus or security incident which:

- (a) may affect the Encodian Software; or
- (b) may affect either party's network and information systems, such that it could potentially affect the Encodian Software.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and rights in domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

Legislation: any statute, statutory provision or subordinate legislation or any mandatory rules issued by any regulatory body having jurisdiction over the applicable party.

Order Form: the online order form, made available to the Reseller by Encodian, that the Reseller must click to accept and submit to Encodian to place an order for Encodian Software, detailing, amongst other things:

- (a) the Reseller's business information, address and contact information;
- (b) the Encodian Software to be supplied or made available by Encodian;
- (c) the Subscription Fees;
- (d) the Customer's name and address;
- (e) the Subscription Term; and
- (f) any other commercial terms agreed by the parties.

Reseller: the organisation distributing or making available the Encodian Software to Customers, as stated on the Order Form.

Reseller Agreement: the agreement between Encodian and the Reseller, comprising the Order Form and these Conditions.

Reseller Data: the data inputted by the Reseller for the purpose of developing, testing, distributing or using the Encodian Software or facilitating the Customer's use of the Encodian Software and any data generated by, or derived from the Reseller's use of the Encodian Software, whether hosted or stored within the Encodian Software or elsewhere.

Reseller Products: the Reseller's products and/or services (including software), sold or marketed by the Reseller separately or alongside the Encodian Software.

Subscription Fees: the subscription or licence fees payable by the Reseller to Encodian as set out in the relevant Order Form.

Subscription Term: means the term set out in each Order Form during which Encodian permits a relevant Customer to use the Encodian Software subject to the EULA.

Trade Marks: the trade mark registrations and applications, together with any unregistered trade marks owned by Encodian, with any further trade marks which Encodian may permit or procure permission for the Reseller by express notice in writing to use.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the United Kingdom.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Virus: any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to writing or written includes email.

1.8 References to clauses and the Schedule are to the clauses and the Schedule of these Conditions.

1.9 Any words following the terms **including, include, 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. APPOINTMENT

2.1 Encodian hereby:

(a) grants the Reseller the non-exclusive, non-transferable and revocable right to redistribute the Encodian Software with the Reseller Products or redistribute the Encodian Software as is; and

(b) appoints the Reseller to distribute and/or make available the Encodian Software as its non-exclusive distributor on the terms of the Reseller Agreement.

2.2 The Reseller undertakes not to purchase licences or subscriptions for the Encodian Software from any person other than Encodian or Encodian's authorised distributors.

2.3 The Reseller shall not represent itself as an agent of Encodian for any purpose, nor pledge Encodian's credit or give any condition or warranty or make any representation on Encodian's behalf or commit Encodian to any contracts. Further, the Reseller shall not without Encodian's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Encodian Software which are inconsistent with those contained in the promotional material supplied by Encodian (including, without limitation, the EULA) or otherwise incur any liability on behalf of Encodian howsoever arising.

2.4 The Reseller shall not distribute or make available the Encodian Software through a sales agent or to a sub-distributor or reseller without the prior express written permission of Encodian. Where Encodian agrees to any such appointment, the Reseller shall ensure that it enters into a written contract with such sales agent, sub-distributor or reseller on terms which provide at least the same level of protection to Encodian as set out in the Reseller Agreement, and that Encodian is permitted to enforce the Reseller's agreement with such sub-distributor or reseller pursuant to the Contracts (Rights of Third Parties) Act 1999.

2.5 The Reseller's appointment under this clause 2 only grants to the Reseller a right to distribute or make available the Encodian Software and does not transfer any right, title, licence or interest in the Encodian Software to the Reseller or its customers. Use of the terms "sell", "license", "purchase", "licence fees" and "price" will be interpreted in accordance with this clause.

2.6 Encodian reserves the right to supply or make available the Encodian Software at any time directly or indirectly to any third party (including the Customers).

3. EULA

3.1 The Reseller acknowledges and agrees that the Customer's (and any Authorised User's) access to and any use of the Encodian Software requires the Customer's acceptance of the EULA.

3.2 Encodian shall make available to and require the Customer's acceptance of the EULA when the Customer initially accesses the Encodian Software.

3.3 If the Customer does not accept the EULA within 1 calendar month from the date the parties validly execute an Order Form (or if the Customer expressly rejects the EULA at any time, as the case may be):

(a) Encodian shall notify the Reseller that the Customer has not accepted the EULA; and

(b) clause 9.7 shall apply.

3.4 The Reseller shall:

(a) comply with the EULA with regard to any use of the Encodian Software by the Reseller, or its personnel;

(b) not authorise, facilitate, enable or knowingly permit any breach of the EULA by any third party, including any Customer or prospective customer;

(c) ensure that, for each Customer, the Authorised User that initially accesses the Encodian Software in accordance with clause 3.2 has the full capacity and authority and all necessary consents to enter into the EULA on behalf of each relevant Customer; and

(d) take reasonable steps to ensure that each Customer and its Authorised Users complies with the EULA.

4. RESELLER'S WARRANTIES, UNDERTAKINGS AND OBLIGATIONS

4.1 The Reseller undertakes and agrees with Encodian to:

- (a) within 14 days of a written request from Encodian at any time, and from time to time, provide such information as is reasonably requested by Encodian about the Reseller's processes and controls to support compliance with the Reseller Agreement; and
- (b) inform Encodian immediately of any changes in ownership or Control of the Reseller and of any change in its organisation or method of doing business which might affect the performance of the Reseller's duties in the Reseller Agreement.

4.2 The Reseller represents, warrants and undertakes that:

- (a) it has full capacity and authority and all necessary consents to enter into and to perform the Reseller Agreement and to grant the rights and licences referred to in the Reseller Agreement and that the Reseller Agreement is executed by its duly authorised representative and represents a binding commitment on it; and
- (b) without affecting its other obligations under the Reseller Agreement it shall comply with all applicable Legislation in the performance of its obligations under the Reseller Agreement.

4.3 The Reseller shall, in reselling the Encodian Software, comply with Encodian's information security, confidentiality and data protection policies relating to the privacy and security of data available here or such other website address as may be notified by Encodian from time to time, as such documents may be amended from time to time by Encodian in its sole discretion.

5. CUSTOMER SUBSCRIPTIONS

Subject to the Reseller complying with its obligations under the Reseller Agreement and the relevant Customer complying with its obligations under the relevant EULA, Encodian shall, from the date that the relevant Customer accepts the relevant EULA until the expiry of the relevant Subscription Term, make available the Encodian Software and the Documents, on a single Microsoft tenant, to the relevant Customer as requested by the Reseller in the relevant Order Form.

6. ACCESS TO SERVICES, SOFTWARE AND DATA

6.1 Encodian reserves the right in the event of:

- (a) a breach or suspected breach of the Reseller Agreement by the Reseller, to immediately:
 - (i) suspend the Reseller's right to resell the Encodian Software; and/or
 - (ii) disable access to the Encodian Software made available to the Reseller and/or to any Customer in connection with the Reseller Agreement,for the duration of time that the breach remains unremedied;
- (b) a cyber or other security incident significantly affecting, or in Encodian's reasonable opinion, likely to significantly affect the provision of the Encodian Software or harm customers, to disable access to the Encodian Software and Documents made available to the Reseller and/or to any Customer in connection with the Reseller Agreement.

6.2 Save as expressly permitted under the Reseller Agreement, the Reseller 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 the Reseller 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 Encodian Software or Documents (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 Encodian Software;
- (b) access all or any part of the Encodian Software and Documents to build a product or service which competes with the Encodian Software or the Documents;
- (c) use the Encodian Software or Documents to provide services to third parties;

- (d) subject to clause 25.2, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise make the Encodian Software or Documents available to any third party; or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Encodian Software or Documents.
- 6.3 The Reseller shall take reasonable steps to prevent any unauthorised access to, or use of, the Encodian Software or the Documents and, if there is any such unauthorised access or use, promptly notify Encodian.
- 6.4 Encodian is entitled, on giving not less than 1 months' written notice to the Reseller, to exclude from the Reseller Agreement one or more elements of the Encodian Software if for any reason the provision of such Encodian Software has been permanently discontinued.
- 6.5 Encodian is entitled to make changes to the Encodian Software or Documents, for example to enhance functionality or for data security reasons.
- 6.6 The Reseller shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Reseller Data. The Reseller hereby licenses Encodian to use the Reseller Data and shall procure that the Customer hereby licences Encodian to use the Customer Data for:
- (a) the proper performance of the Encodian Software, including provision of the Documents;
 - (b) the purposes set out in Encodian's Privacy Policy; and
 - (c) all other purposes relevant to the proper exercise of Encodian's rights and obligations under the Reseller Agreement or the EULA.

7. SERVICE OBLIGATIONS

Encodian undertakes:

- (a) to provide such information and support as may be reasonably requested by the Reseller to enable it to properly and efficiently discharge its duties under the Reseller Agreement; and
- (b) to approve or reject any promotional information or material submitted by the Reseller within 28 days of receipt.

8. ENCODIAN'S WARRANTIES, UNDERTAKING AND OBLIGATIONS

- 8.1 Encodian warrants to the Reseller that the Encodian Software supplied under an Order Form will operate substantially in accordance with, and perform, the material functions and features as set out in the applicable part(s) of the Documents.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Encodian Software contrary to Encodian's instructions, or modification or alteration of the Encodian Software by any party other than Encodian or Encodian's duly authorised contractors or agents. If the Encodian Software does not conform with the foregoing undertaking, Encodian will, at its expense, and as the Reseller's sole right and remedy, correct any such non-conformance promptly.
- 8.3 The Reseller Agreement shall not prevent Encodian from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documents, products or services which are similar to those provided under the Reseller Agreement.
- 8.4 Encodian:
- (a) does not warrant that use of the Encodian Software will be uninterrupted or error-free; 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 Reseller acknowledges that the Encodian Software and Documents may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.5 Encodian warrants and undertakes that:
- (a) it has full capacity and authority and all necessary consents to enter into and to perform the Reseller Agreement and to grant the rights and licences referred to in the Reseller Agreement and that the Reseller Agreement is executed by its duly authorised representative and represents a binding commitment on it;
 - (b) without affecting its other obligations under the Reseller Agreement it shall comply with all applicable Legislation in the performance of its obligations under the Reseller Agreement; and

- (c) it will notify the Reseller in writing immediately on the occurrence of a change of control of Encodian.

9. PRICES AND PAYMENT

- 9.1 The Reseller shall pay the Subscription Fees to Encodian for the Encodian Software.
- 9.2 Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under the Reseller Agreement shall be paid by the Reseller unless Encodian has expressly agreed beforehand in writing to pay such expenses, costs and charges.
- 9.3 The Reseller shall pay the full amount invoiced to it by Encodian within the period stipulated in the relevant invoice.
- 9.4 All amounts due under the Reseller Agreement shall be paid by the Reseller to Encodian in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.5 As between Encodian and the Reseller, the Reseller shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the distribution of the Encodian Software.
- 9.6 If the Reseller fails to pay any amounts due to Encodian under the Reseller Agreement by the due date for payment, then, without limiting Encodian's remedies under clause 18, the Reseller shall pay interest on the overdue amount at the rate of 8% a year above the Bank of England's base rate from time to time. 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 Reseller shall pay the interest together with the overdue amount.
- 9.7 If any Customer does not accept the EULA within the period set out in clause 3.3, Encodian shall:
 - (a) cancel the Reseller's order (or part of the order, as the case may be); and
 - (b) refund the Reseller the applicable Subscription Fees paid by the Reseller, in a method determined solely by Encodian, within 1 calendar month from the date Encodian provides the requisite notice under clause 3.3(a).
- 9.8 For the avoidance of doubt, Encodian's cancellation of any order in accordance with clause 9.7 shall not constitute a breach of the Reseller Agreement and such

cancellation is without prejudice to any other rights or remedies to which Encodian may be entitled.

10. COMPLIANCE WITH LAWS AND REGULATIONS

10.1 In performing its obligations under the agreement, the parties shall:

- (a) comply with all applicable laws, statutes, regulations from time to time in force, including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- (c) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to Encodian, the Encodian Software or the public and shall not publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to Encodian or the Encodian Software.

10.2 Breach of clause 10.1 shall constitute a material breach of the Reseller Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Reseller acknowledges and agrees that Encodian or its licensors own all Intellectual Property Rights in the Encodian Software and the Documents. Except as expressly stated in the Reseller Agreement, the Reseller Agreement does not grant the Reseller any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Encodian Software or the Documents.

11.2 Encodian confirms that it has all the rights in relation to the Encodian Software and Documents that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Reseller Agreement and the EULA.

11.3 The Reseller shall, at the expense of Encodian, take all such steps as Encodian may reasonably require to assist Encodian in maintaining the validity and enforceability of the Intellectual Property Rights of Encodian during the term of the Reseller Agreement.

- 11.4 Without prejudice to the right of the Reseller or any third party to challenge the validity of any Intellectual Property Rights of Encodian, the Reseller shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of Encodian and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 11.5 Encodian grants to the Reseller a non-exclusive, revocable, personal licence (subject to the terms and conditions of the Reseller Agreement, and during its term and solely for the purposes of performing the Reseller's obligations under the Reseller Agreement) to:
- (a) use the Encodian Software in compliance with the Reseller's appointment in clause 2 and for the purposes of demonstrating, marketing and distributing the Encodian Software to Customers and fulfilling its other obligations under the Reseller Agreement;
 - (b) combine the Encodian Software with the Reseller Products (where applicable) and provide access to, or otherwise facilitate the use of the Encodian Software by, each Customer who has signed the EULA during the Subscription Term for the Customer's internal business operations; and
 - (c) use the Trade Marks for the purpose of the promotion, advertisement and distribution of the Encodian Software.
- 11.6 The Reseller shall ensure that each reference to, and use of, any of the Trade Marks by the Reseller is in a manner approved from time to time by Encodian and accompanied by an acknowledgement in a form approved by Encodian that the same is a trade mark (or registered trade mark) of Encodian.
- 11.7 The Reseller acknowledges that neither it, nor any Customer, has a right to access the Encodian Software in source code form.

12. SECURITY OF THE SERVICES AND/OR SOFTWARE

- 12.1 Each party shall notify the other immediately if it becomes aware of any Incident, and respond without delay to all queries and requests for information from the other party about any Incident, in particular bearing in mind the extent of any reporting obligations the other party may have under applicable data protection legislation and that the other party may be required to comply with statutory or other regulatory timescales.

- 12.2 Each party agrees to co-operate with the other party in relation to any Incident.
- 12.3 Each party shall (and warrants and represents that it shall) at all times mitigate against all Incidents.

13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time for the duration of the Reseller Agreement and for a period of five years after termination or expiry of the Reseller Agreement, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Reseller Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Reseller Agreement.
- 13.3 This clause 13 shall survive termination of the Reseller Agreement for any reason.

14. DATA PROTECTION

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 14.2 Both parties will comply with Encodian's DPA in connection with Encodian's processing of any personal data on the Reseller (or the Customer's) behalf.

15. NO PARTNERSHIP OR AGENCY

- 15.1 Nothing in the Reseller Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party

the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in clause 2.

15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

16. INDEMNITY

16.1 Encodian shall, subject always to the Reseller's compliance with clause 16.2 below, indemnify the Reseller, its affiliates and subsidiaries and its and their officers, directors and employees against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred or paid by the Reseller arising out of or in connection with any claim brought against the Reseller alleging that the possession or use of the Encodian Software in accordance with the Reseller Agreement and the EULA infringes the UK Intellectual Property Rights of a third party.

16.2 If Encodian is required to indemnify the Reseller under this clause 16, the Reseller shall:

- (a) notify Encodian in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 16.1 (IPRs Claim);
- (b) allow Encodian, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that Encodian shall obtain the Reseller's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide Encodian with such reasonable assistance regarding the IPRs Claim as is required by Encodian, subject to reimbursement by Encodian of the Reseller's reasonable costs so incurred; and
- (d) not, without prior consultation with Encodian, make any admission relating to the IPRs Claim or attempt to settle it, provided that Encodian considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Reseller into disrepute.

- 16.3 In the defence or settlement of any IPRs Claim, Encodian may procure the right for the Reseller to continue using the Encodian Software or replace or modify the Encodian Software without a reduction or alteration in functionality so that the Encodian Software becomes non-infringing.
- 16.4 In no event shall Encodian, its employees, agents and subcontractors be liable to the Reseller to the extent that any IPRs Claim is based on:
- (a) a modification of the Encodian Software or Documents by anyone other than Encodian or its agents, subcontractors or partners;
 - (b) use of the Encodian Software or Documents otherwise than in accordance with the Documents or the terms of the Reseller Agreement; or
 - (c) use of the Encodian Software or Documents after notice of the alleged or actual infringement from Encodian or any appropriate authority.
- 16.5 In the defence or settlement of the claim, Encodian may obtain for the Reseller the right to continue distributing the Encodian Software in the manner contemplated by the Reseller Agreement, replace or modify the Encodian Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Reseller Agreement immediately by notice in writing and without liability to the Reseller. Encodian shall not in any circumstances have any liability if the alleged infringement is based on:
- (a) the Reseller Products, whether in whole or in part;
 - (b) a modification of the Encodian Software by anyone other than Encodian;
 - (c) the Reseller's marketing, advertising, distribution or use of the Encodian Software in a manner contrary to the instructions given to the Reseller by Encodian;
 - (d) the Reseller's marketing, advertising, distribution or use of the Encodian Software after notice of the alleged or actual infringement from Encodian or any appropriate authority; or
 - (e) use or combination of the Encodian Software with the Reseller Products in circumstances where, but for such combination, no infringement would have occurred.
- 16.6 The foregoing states the Reseller's sole and exclusive rights and remedies, and Encodian's entire obligations and liability, in the case of any claim brought

against the Reseller alleging that the possession or use of the Encodian Software in accordance with the Reseller Agreement and the EULA infringes the Intellectual Property Rights of a third party.

16.7 Each party shall, at the request and expense of the other, provide all reasonable assistance to the other (including, but not limited to, the use of its name in, or being joined as a party to, proceedings) in connection with any action to be taken by the other party, provided that that party is given such indemnity as it may reasonably require against any damage to its name.

17. LIMITATION OF LIABILITY

17.1 Except as expressly and specifically provided in the Reseller Agreement, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Reseller Agreement.

17.2 Nothing in the Reseller Agreement excludes or limits the liability of each party for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter for which it would be unlawful for the parties to exclude liability.

17.3 Subject to clause 17.2, 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) any loss or liability arising out of or in connection with a malfunction of the Encodian Software;
- (d) any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (e) any loss or liability (whether direct or indirect) under or in relation to any other contract.

- 17.4 Clause 17.3 shall not prevent claims, which fall within the scope of clause 17.5, for:
- (a) sums paid under the Reseller Agreement for software not provided by Encodian; or
 - (b) physical damage to the Customer's computer systems caused as a result of the malfunction of the Encodian Software.
- 17.5 Subject to clause 17.2, 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 the Reseller Agreement or any collateral contract shall not exceed the cap.
- 17.6 In clause 17.5 and this clause 17.6:
- (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;
 - (b) Total charges. The total charges means all sums paid to Encodian by the Reseller under the Reseller Agreement in the contract year in which the breach of contract, tort, duty, misrepresentation or other default attributable to Encodian occurred; and
 - (c) Contract year. Contract year means any 12-month period ending on any anniversary of the Effective Date.
- 17.7 The Reseller accepts responsibility for selecting the Encodian Software and for combining it with the Reseller Products and acknowledges that the Encodian Software and Documents have not been developed or designed to meet or support any individual requirements of the Reseller or any Customer.

18. TERM AND TERMINATION

- 18.1 The Reseller Agreement shall commence on the Effective Date. Unless terminated earlier in accordance with clause 18.3 or clause 18.4, the Reseller Agreement shall continue until either party gives to the other party not less than 1 calendar month's written notice to terminate.
- 18.2 Without affecting any other right or remedy available to it, either party may terminate the Reseller Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Reseller 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 the Reseller Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 1 calendar month after being notified in writing to do so;
- (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Reseller Agreement is in jeopardy.

18.3 Without prejudice to any other rights or remedies to which Encodian may be entitled, Encodian may terminate the Reseller Agreement without liability to the Reseller if:

- (a) if the Reseller commits a breach of its obligation in clause 4.2;
- (b) there is a change of Control of the Reseller; or
- (c) the Reseller purports to assign any of its rights or obligations under the Reseller Agreement.

18.4 For the purposes of clause 18.2(b), a material breach means:

- (a) a breach of any of any of the obligations set out in clauses 3, 10, 12, 13, 19.1(b); or
- (b) a breach that has a serious effect on the benefit the terminating party would otherwise derive from the Reseller Agreement.

18.5 The submission of a completed Order Form by the Reseller constitutes an offer by the Reseller to purchase the Encodian Software in accordance with the Reseller Agreement.

18.6 The Reseller's offer through the submission of a completed Order Form shall only be deemed to be accepted by Encodian when Encodian raises an invoice and provides it to the Reseller.

19. EFFECTS OF TERMINATION

- 19.1 On termination or expiry of the Reseller Agreement for any reason:
- (a) without prejudice to each EULA between Encodian and each Customer, all outstanding orders submitted by the Reseller shall be cancelled and the Reseller shall (at its sole cost) return (or at Encodian's option, destroy or delete) all media (subject to clause 19.1(b) on which the Encodian Software or Documents are held and the Reseller shall stop combining the Encodian Software with the Reseller Products, cease all marketing and sales activity;
 - (b) for no more than 6 months following termination of the Reseller Agreement the Reseller shall provide all assistance and information requested by Encodian and shall co-operate with Encodian and any replacement reseller to facilitate a smooth transition from the Reseller. Any continued sale or distribution of the Encodian Software post termination shall be subject to the terms of the Reseller Agreement and the continued payment of the Subscription Fees;
 - (c) on the expiry of the 6-month period under clause 19.1(b), the Reseller shall promptly return to Encodian, or otherwise delete or dispose of as Encodian may instruct, any Encodian Software, Documents and other items relating to Encodian's business (and copies of them) (other than correspondence which has passed between the parties) which the Reseller may have in its possession or under its control and, in the case of destruction or deletion, the Reseller shall certify the same to Encodian;
 - (d) the accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced; and
 - (e) subject to the foregoing provisions of this clause 19.1, all rights and licences of the Reseller under the Reseller Agreement shall terminate.
- 19.2 The termination of the Reseller Agreement shall not of itself give rise to any liability on the part of Encodian to pay any compensation to the Reseller for loss of profits or goodwill, to reimburse the Reseller for any costs relating to or resulting from such termination, or for any other loss or damage.

20. FORCE MAJEURE

Neither party shall have any liability to the other under the Reseller Agreement if it is prevented from, or delayed in, performing its obligations under the Reseller Agreement, arising from any Force Majeure Event, provided that:

- (a) the other party is notified of such an event and its expected duration; and
- (b) it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned, and that if the period of delay or non-performance continues for 1 month or more, the party not affected may terminate the Reseller Agreement by giving not less than 14 days' written notice to the other party.

21. WAIVER

- 21.1 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.
- 21.2 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.

22. SEVERANCE

- 22.1 If any provision or part-provision of the Reseller 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 the Reseller Agreement.
- 22.2 If any provision or part-provision of the Reseller Agreement is deemed deleted under clause 22.1 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.

23. ENTIRE AGREEMENT

- 23.1 The Reseller 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.
- 23.2 Each party acknowledges that in entering into the Reseller 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 the Reseller Agreement.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Reseller Agreement.

24. VARIATION

No variation of the Reseller Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. ASSIGNMENT

25.1 Encodian may at any time assign, mortgage, charge, delegate, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Reseller Agreement, provided that it gives prior written notice of such dealing to the Reseller.

25.2 The Reseller shall not, without the prior written consent of Encodian (such consent not to be unreasonably withheld), assign, transfer, mortgage, charge, delegate, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Reseller Agreement.

26. THIRD PARTY RIGHTS

26.1 Unless it expressly states otherwise, the Reseller Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Reseller Agreement.

26.2 The rights of the parties to rescind or vary the Reseller Agreement are not subject to the consent of any other person.

27. RIGHTS AND REMEDIES

The rights and remedies provided under the Reseller Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. NOTICES

28.1 Any notice required to be given under the Reseller Agreement shall be in writing and shall be:

(a) if given by Encodian:

(i) delivered by commercial courier to the Reseller'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 Reseller): the email address for the Reseller's representative recorded on the Order Form.

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

28.2 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.

28.3 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.

29. GOVERNING LAW

The Reseller Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the laws of England and Wales.

30. JURISDICTION

The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the Reseller Agreement, its subject matter or its formation (including non-contractual disputes or claims).

SCHEDULE 1 EULA

END USER LICENCE AGREEMENT

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, our or we) for:

- a. our 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 STAFF). 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 (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 a single Microsoft tenant, 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 reasonably 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 interoperability 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 Subscription 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 7.3 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 in accordance with clause 7.3(a).
- 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, 24 hours after an email is sent, or three days after the date of posting of any letter; 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; in the case of a letter, that such letter was properly addressed, stamped and placed in the post (first class) to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient.

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](https://www.encodian.com/policies/privacy-policy/) 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.