

End-User Licence Agreement

1. General conditions

- 1.1. Under this End User Licence Agreement (the "Agreement"), FLAIM Systems Pty Ltd (the "FLAIM") grants to the user (the "Licensee") a non-exclusive and non-transferable licence (the "Licence") to use FLAIM Capture (the "Software").
- 1.2. "Software" includes the executable computer programs, software and any related printed, electronic and online documentation and any other files that may accompany the product.
- 1.3. Title, copyright, intellectual property rights and distribution rights of the Software remain exclusively with FLAIM. Intellectual property rights include the functionality, look and feel of the Software.
- 1.4. This Agreement constitutes a licence for use only and is not in any way a transfer of ownership rights to the Software.
- 1.5. The rights and obligations of this Agreement are personal rights granted to the Licensee only. The Licensee may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. The Licensee may not make available the Software for use by one or more third parties.
- 1.6. The Software may not be modified, reverse-engineered, or de-compiled in any manner through current or future available technologies.
- 1.7. Failure to comply with any of the terms under the Licence section will be considered a material breach of this Agreement.

2. Licence Fee

- 2.1. The original purchase price paid by the Licensee will constitute the entire licence fee and is the full consideration for this Agreement.

3. Limitation of Liability

- 3.1. The Software is provided by FLAIM and accepted by the Licensee "as is". Liability of FLAIM will be limited to a maximum of the original purchase price of the Software less depreciation in value from the commencement of the Agreement to the date a claim is settled. FLAIM will not be liable for any general, special, incidental or consequential damages including, but not limited to, loss of production, loss of profits, loss of revenue, loss of data, or any other business or economic disadvantage suffered by the Licensee arising out of the use or failure to use the Software.
- 3.2. FLAIM makes no warranty expressed or implied regarding the fitness of the Software for a particular purpose or that the Software will be suitable or appropriate for the specific requirements of the Licensee.
- 3.3. FLAIM does not warrant that use of the Software will be uninterrupted or error-free. The Licensee accepts that software in general is prone to bugs and flaws within an acceptable level as determined in the industry.

4. Warrants and Representations

- 4.1. FLAIM warrants and represents that it is the copyright holder of the Software. FLAIM warrants and represents that granting the licence to use this Software is not in violation of any other agreement, copyright or applicable statute.

5. Acceptance

- 5.1. All terms, conditions and obligations of this Agreement will be deemed to be accepted by the Licensee ("Acceptance") on registration of the Software with FLAIM.

6. User Support

- 6.1. The Licensee will be entitled to 36 months of online Software service ticketing support and back to base full system and parts replacement warranty in the event of a faulty product that cannot be resolved through online support.
- 6.2. Support will be provided as follows;
- 6.3. Licensee can log requests at [FLAIM Support](#)
- 6.4. Service tickets are monitored during normal working hours Monday to Friday, 8am to 6pm
- 6.5. Service tickets will be responded within 24 hours or on the next working day if the ticket is raised on a weekend or public holiday.
- 6.6. Calls received outside these hours will be forwarded to a mobile messaging system. FLAIM will endeavor to respond to messages within 24 hours or on the next working day if received on a weekend or public holiday.
- 6.7. The Licensee will be entitled to maintenance upgrades and bug fixes, at no additional cost, on a biannual basis for the term of this Agreement, commencing the from the date the Software is Registered.

7. Term

- 7.1. The term of this Agreement will begin on Acceptance and will continue for a period of 36 months.
- 7.2. At the end of the term of this Agreement access to the Software will be terminated with FLAIM providing offboarding support through [FLAIM Support](#) to remove Licensee data from Software.

8. Termination by Licensee default

- 8.1. This Agreement will be terminated and the Licence forfeited where the Licensee has failed to comply with any of the terms of this Agreement or is in breach of this Agreement. On termination of this Agreement for any reason, the Licensee will lose access to the Software FLAIM will delete all Licensee data.

9. Force Majeure

- 9.1. FLAIM will be free of liability to the Licensee where FLAIM is prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where FLAIM has taken any and all appropriate action to mitigate such an event.

10. Additional Clauses

- 10.1. Licensee learner data records retained by the Software are securely stored on FLAIM Systems Pty Ltd web-servers.
- 10.2. Licensee learner data records remains the property of the Licensee for the duration of this Agreement.
- 10.3. FLAIM has the sole right to review, analyse and report aggregated learner data records collected on FLAIM Software whatever the origin.
- 10.4. FLAIM's rights extended to learner data activity reporting.
- 10.5. Licensee agrees to allow FLAIM to use this data for reporting and marketing purposes.
- 10.6. Licensee agrees to allow FLAIM to publish the Licensee organisation name as customer.
- 10.7. FLAIM gives an explicit undertaking that it will not disclose any individual information stored by Licensee on the Software at any time without the prior written consent of the Licensee.
- 10.8. If at the end of this Agreement the Licensee has not entered into another Licence with FLAIM, FLAIM will, within three (3) months of the termination of this Agreement, provide online off-boarding support to remove ALL end-user data from the Software.
- 10.9. FLAIM has the right to communicate directly with the Licensee.

11. Governing Law

- 11.1. The Parties to this Agreement submit to the jurisdiction of the courts of the State of Victoria for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement. This Agreement will be enforced or construed according to the laws of the State of Victoria.

12. Miscellaneous

- 12.1. This Agreement can only be modified in writing signed by both FLAIM and the Licensee.
- 12.2. This Agreement does not create or imply any relationship in agency or partnership between FLAIM and the Licensee.
- 12.3. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

12.4. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

12.5. This Agreement contains the entire agreement between the parties. All understandings have been included in this Agreement. Representations which may have been made by any party to this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value in this Agreement. Only the written terms of this Agreement will bind the parties.

12.6. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon the FLAIM's successors and assigns.

13. Notices

13.1. All notices to the FLAIM under this Agreement are to be provided at the following address: FLAIM Systems Pty Ltd: ManuFutures Building NP, 75 Pigdons Road, Waurn Ponds, VIC, 3216