

END USER LICENSE AGREEMENT

Last updated May 14, 2024

EMode Products are licensed to You (“Your”, “End User”, “Licensee”, or “Customer”) by EMode Photonix LLC (“EMode”, “Licensor”, “We”, “Our”, or “Us”) for use only under the terms of this License Agreement.

By selecting the “I accept” button or other mechanism designed to acknowledge to the terms of an electronic copy of this Agreement, downloading, or using all or any portion of EMode Products or Content provided through the EMode Services, You indicate that You agree to accept and be bound by all of the terms and conditions of this License Agreement and all other Agreements referenced and incorporated herein (Terms of Use, Privacy Notice, etc.). You represent and warrant that you have the authority to act on behalf of and bind such legal entity and its affiliates or yourself and not be barred from doing so under any applicable laws, only use the EMode Products and Content within the Territory where you acquired them, and promise that any registration information you submit to EMode is true and complete. EMode reserves all rights not expressly granted to You.

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1. LICENSE TYPES

EMode offers various software product tiers which can be found on our website:

- Free Software: This basic tier provides access to certain features without requiring payment.
- Trials: EMode may offer limited-time trials of subscriptions with or without payment. EMode reserves the right to determine eligibility, withdraw, or modify Trials at any time.
- Subscriptions: Paid plans offering additional features require payment before access. You can purchase Subscriptions directly from EMode.

2. SCOPE OF LICENSE

Limited License Grant

EMode grants You (and Your designated Authorized Users) a non-exclusive, non-transferable, non-sublicensable, time-limited subscription license to install and use the EMode Products or Content (including any Updates or Upgrades) on any Devices that You own or control and permitted by the Usage Policy. You must:

- comply with these terms and conditions,
- maintain payment of applicable fees,
- use the service within the limits of Your subscription plan solely for the purpose of analyzing, building or testing Customer developed code only, considering:
 - the Licensing Period,
 - the Territory (geographic region) set by You during the checkout process,
 - any additional terms or conditions that apply

You may not copy (excluding when expressly authorized by this license and the Usage Rules) or alter the EMode Products or Content or portions thereof. You may create and store copies only on devices that You own or control for backup or archival purposes keeping under the terms of this license, the Usage Rules, and any other terms and conditions that apply to the device or software used. You may not remove any intellectual property notices. You acknowledge that no unauthorized third-parties may gain access to these copies at any time.



If you sell your Devices to a third-party, you must remove the Licensed Software from the Devices before doing so.

You are required to obtain written consent from EMode prior to publicly disseminating any evaluation or results of EMode's operations, whether through scientific journals or any other medium, with the intent of contributing to peer reviews or enhancing public knowledge; provided that such sharing does not disclose proprietary or confidential information of EMode or violate any other terms of this Agreement. If you use EMode for design or analysis in a publication, please use the following citation:

- EMode [software] from EMode Photonix. Available at <https://emodephotonix.com>.

This license does not constitute a sale or transfer of ownership.

The license will also govern any updates of the Licensed Software provided by EMode that replace, repair, and/or supplement the first Licensed Software, unless a separate license is provided for such Update, in which case the terms of that new license will govern.

Violations of the obligations mentioned in the Usage Policy, below, as well as the attempt of such infringement, may be subject to prosecution and damages.

EMode reserves the right to modify the terms and conditions of this License Agreement.

Usage Policy

The rights granted to You above are conditional upon Your compliance with the following obligations:

- You are only permitted to use the EMode Products or Content within the specific limitations outlined in this Agreement. This includes restrictions on copying, modifying, transferring, reverse engineering, disassembling, or disclosing them to third parties.
- Access to the Licensed Software is limited to Authorized Users and expires upon the Licensing Period's conclusion. At that point, all copies of the product must be deleted from your systems.
- You are responsible for ensuring all personnel you share information with regarding the product comply with these restrictions.
- Your use of the product is monitored and controlled through EMode's License Manager tool. You may not circumvent or interfere with this tool.
- You are prohibited from:
 - Reverse engineering, decompiling, modifying, or gaining unauthorized access to the software.
 - Infringing on EMode's copyrights.
 - Removing or modifying intellectual property notices (e.g. copyright, logo, confidentiality, trademark, patent) from any EMode Products or Content.

Customer will reproduce such notices on all copies Customer is authorized to make of the Licensed Software.

- Infringing on EMode's intellectual property to create similar software (e.g. any method, function, tool, feature, user interface, or graphics, etc).
- Copying (except for archival purposes), framing, mirroring, republishing, or exploiting EMode Products or Content beyond your own internal business content.
- Deleting or modifying any element of the software or content (except your own).
- Selling, sublicensing, distributing, leasing, renting, loaning, or other transferring access to the software or content to a third-party, regardless of whether on a service bureau basis (providing access as part of another service) or otherwise.
- Evading, tampering with, circumventing, or damaging any technological measures implemented by EMode.
- Using the software for any unlawful or tortious purpose.
- Misrepresenting yourself or your affiliation.
- Disclosing to any third-party any comparison of the results of operation of EMode's products with other products.
- Allow access or use of the Licensed Software to anyone other than the Authorized Users, without EMode's prior express written consent.
- Using the services to develop competing applications that perform substantially similar functions.
- Performing unauthorized data extraction or incorporating EMode Products or Content into machine learning or artificial intelligence models.
- Manipulating content influence, ratings, or other metrics.
- Engaging in any conduct that violates applicable laws or regulations.
- Breaching any provision of the agreement.

You are responsible for preventing unauthorized access to the EMode Products or Content. This includes preventing access by sanctioned individuals, entities, or organizations listed by the U.S. Department of Treasury, Office of Foreign Asset Control (OFAC), the UN, EU, or their member countries. You are also responsible for preventing access from any entity or organization that is 50% or more controlled, directly or indirectly, by a party listed on any of the aforementioned sanctioned party lists. "Controlled" in this context refers to ownership, voting rights, or the ability to direct the activities of the entity or organization.

You are also responsible for complying with export control regulations. This includes preventing access to the EMode Products or Content if they are:

- located in Embargoed Regions
- have been exported or re-exported in violation of U.S. or other applicable export control laws.



Nothing in this License Agreement shall be interpreted to restrict third-party terms. When using the Licensed Software, You must ensure that You comply with the applicable third-party terms and conditions.

Taxes

This Agreement establishes that any transaction taxes (sales, use, consumption, etc.) imposed by law due to EMode's licensing of products and services to the Customer are the sole responsibility of the Customer. The Customer agrees to either pay these taxes directly or reimburse EMode for any such taxes incurred.

The location of electronic delivery for EMode Products determines the applicable tax rate. Invoices for these products and services will include the relevant sales tax. Invoices are issued upon Customer execution of the Purchasing Agreement.

Withholding Income Tax:

In the event that a payment due under this Agreement is subject to mandatory income withholding tax, the Customer is granted limited deduction and withholding rights:

- The Customer may withhold an amount not exceeding the legal limit set by the applicable jurisdiction's domestic laws or any relevant income tax treaty.
- The Customer is obligated to remit the withheld amount to the appropriate taxing authority on EMode's behalf.

The Customer must obtain official receipts or other documented proof of payment from the taxing authority and provide it to EMode within a reasonable timeframe, but no later than sixty (60) days following the original payment to EMode.

The Customer is further expected to cooperate reasonably with EMode's efforts to obtain tax exemption for withholding tax or recover any excess withholding that may occur.

The Customer waives any right to claim reimbursement from EMode for withholding taxes unless the Customer demonstrates deduction and remittance of the taxes to the relevant authorities, along with documented proof as outlined in this Section.

Applicable Fees, Taxes and Delivery

All fees associated with the purchase are due on the effective date of the Purchasing Agreement and are non-refundable thereafter. The specific Payment Terms are outlined in the Purchasing Agreement.

Payment for all fees is due within 30 days of receiving the invoice from EMode. Alternatively, you can authorize EMode to charge your designated payment method.



Any outstanding balance past the due date will accrue interest at a rate of 1.5% per month, or the maximum legal rate (whichever is lower).

EMode has the right to withhold access to a Licensed Software and/or terminate the Purchase Agreement, accelerating the due date for all remaining payments, if You fail to settle the outstanding balance by the scheduled due date. In such a scenario, the entire remaining balance becomes due upon written notification from EMode regarding the overdue payment.

EMode reserves the right to adjust fees or service tier terms. Price changes will be communicated through the website and take effect at the start of the next billing cycle. You have the option to reject a price change by unsubscribing before the new pricing takes effect.

All fees are net amounts, exclusive of any taxes or duties. You are responsible for all taxes and duties (including sales, use, and withholding taxes) associated with the purchase under the Purchasing Agreement, with the exception of EMode's net income taxes. The applicable tax rate is determined by the location of electronic delivery for the EMode Products and Content. Invoices for these products and services will include the relevant sales tax and are issued upon Your execution of the Purchasing Agreement.

Account Creation

You may need an EMode Account to access certain Services. You are solely responsible for your compliance with these terms and the security and integrity of your data; including your username and password. EMode may send notices to the address associated with your purchase order, account registration, or email address.

You may authorize others ("Authorized Users") to access your account information in order to use EMode Products and Content on your behalf for internal business purposes. However, You remain solely responsible for:

- Your Authorized Users' compliance with these terms and conditions.
- The acts and omissions of your Authorized Users'.
- Enacting a written agreement between you and your Authorized User requiring that the Licensed Software, Confidential Information and intellectual property is protected at least to the same extent as set forth in this agreement.
- Preventing unauthorized use of the Licensed Software and notifying EMode of any such incidents.
- You are also responsible for anyone accessing the Licensed Software through your account, even if they have separate accounts or terms.

EMode will provide access to the EMode Products and Site through your account or electronic means during the Licensing Period. EMode is not liable for any losses incurred by you or others due to incorrect account information. If you suspect unauthorized use of your account, please contact EMode at hello@emod photonix.com.

Term of Purchasing Agreement/Licensing Period

The duration of your subscription is referred to as the "Licensing Period" which may be specified in a fulfillment email, your account, or applicable additional terms.

3. TECHNICAL REQUIREMENTS

Technical Specifications

The Licensed Software requires:

- A Computing Device running Windows 10 or Windows 11 operating system with 64 bit architecture
- A minimum of 956 MB free disk space for installation
- Either Python (version 3.7 or higher) or MATLAB (version R2016b or higher)

You acknowledge that it is Your responsibility to confirm and determine that the Device on which You intend to install and use the Licensed Software satisfies the technical requirements mentioned above.

EMode reserves the right to modify the technical specification as it sees appropriate at any time.

Disclaimer

The Licensed Software utilizes system resources, including RAM, to function. The amount of RAM needed for optimal performance can vary depending on the complexity and size of the tasks you perform within the software. Running the Licensed Software with limited RAM may cause the software to run slower, experience crashes, or exhibit unexpected behavior. We are not liable for any data loss, performance issues, or other problems resulting from insufficient RAM. For a smooth user experience with the Licensed Software, we strongly recommend having sufficient available RAM for your typical use cases. Consider the complexity of the tasks you plan to perform and consult your system's documentation to determine your available RAM.

Licensed Software Updates

EMode may periodically offer Updates or Upgrades to the features and functionalities of the Licensed Software during the Licensing Period. You are obligated to install mandatory updates promptly. This ensures you benefit from the latest features, security fixes, and bug resolutions.

Certain EMode Products may automatically connect your devices to the internet for several purposes:

- Verifying that you are using EMode Products in accordance with your subscription.

- Delivery software updates.
- Detecting software piracy.
- Granting access, including access to third-party materials.

You and your Authorized Users implicitly agree to these connections, validation, and automatic updates/upgrades. In some cases, these settings might not be adjustable, especially if automatic updates are essential for the service's operation or security.

4. MAINTENANCE AND SUPPORT

EMode has no obligation to maintain, support, upgrade, update, or provide specific content for any EMode Products or Content. EMode or content owners may remove content without notice.

Maintenance and Support Overview

EMode's Maintenance Services (or "Maintenance Services") provide access to updates, workarounds, and technical support (if applicable) for the Licensed Software. These services require payment of relevant fees and are offered for a Licensing Period specified in Your Purchasing Agreement.

Maintenance Service Details

Updates: You will receive updates to the Licensed Software, including:

- Major Releases: These updates introduce significant new functionalities (version changes in the first digit, e.g., 1.0.0 to 2.0.0). EMode determines the content and timing of these releases.
- Minor Releases: These updates offer minor functionality enhancements and fixes (version changes in the middle digit, e.g., 1.0.0 to 1.1.0). EMode determines the content and timing of these releases.
- Workarounds: These are patches, bug fixes, or procedural adjustments designed to restore functionality after specific release issues (version changes in the last digit, e.g., 1.0.0 to 1.0.1). Applying the latest release is mandatory for continued support.

Delivery: Workarounds will be delivered electronically or downloaded from the EMode website.

Technical Support: Unless explicitly stated in your Purchasing Agreement, EMode does not provide technical support as part of Maintenance Services.

Exclusions to Maintenance Services

Access to new or bundled product offerings is not included in Maintenance Services, and requires a separate license. EMode is not obligated to provide Maintenance Services for issues arising from:

- Modifications to the Licensed Software by unauthorized individuals.
- Using the Licensed Software in violation of the license agreement or documentation.
- Using unsupported software releases.
- Failing to install updates or fixes provided by EMode.
- Using scripts or deliverables from On-Site Support services.

EMode will notify you if they determine an issue falls under these exclusions and will not be obligated to provide further Maintenance Services for that specific problem.

Additional Services

If you require services beyond the standard Maintenance Services, EMode will bill you at their current rates.

5. USE OF DATA

You acknowledge that EMode will be able to access and adjust Your personal information, and that Our use of such material and information is subject to Your legal agreements with EMode's Privacy Notice: <https://emodephotonix.com/privacy-notice/>.

You acknowledge that EMode may periodically collect and use technical data and related information about your Device, system, Licensed Software, and peripherals, offer product support, facilitate the software updates, and for purposes of providing other service to you (if any) related to the Licensed Software. EMode may also use this information to improve its products or to provide services or technologies to you, as long as it is in a form that does not personally identify you.

6. USER-GENERATED CONTRIBUTIONS

We may provide you with the opportunity to create, submit, post, display, transmit, perform, publish, distribute, or broadcast content and materials to us or in connection with your account, including but not limited to text, writings, video, audio, photographs, graphics, comments, suggestions, or personal information or other material (collectively, "Your Contributions"). Your Contributions may be viewable by other users of the EMode Products and Content and through third-party websites or applications. As such, any Contributions you transmit may be treated in accordance with the privacy notice:

<https://emodephotonix.com/privacy-notice/>. When you create or make available any Contributions, you thereby represent and warrant that:

- The creation, distribution, transmission, public display, or performance, and the accessing, downloading, or copying of Your Contributions do not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret, or moral rights of any third-party.
- You are the sole owner and creator of or have the necessary licenses, rights, consents, releases, and permissions to use and to authorize others (including EMode) to use Your Contributions in any manner contemplated by the EMode Products and this License Agreement.
- You have the written consent, release, and/or permission of each and every identifiable individual person in Your Contributions to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of Your Contributions in any manner contemplated by the EMode Products and this License Agreement.
- Your Contributions are not misleading or purposefully inaccurate.
- Your Contributions are not unsolicited or unauthorized advertising, promotional materials, pyramid schemes, chain letters, spam, mass mailings, or other forms of solicitation.
- Your Contributions are not obscene, lewd, lascivious, filthy, violent, harassing, libelous, slanderous, or otherwise objectionable (as determined by us in good faith).
- Your Contributions do not ridicule, mock, disparage, intimidate, or abuse anyone.
- Your Contributions are not used to harass or threaten (in the legal sense of those terms) any other person and to promote violence against a specific person or class of people.
- Your Contributions do not violate any applicable law, regulations, or rules.
- Your Contributions do not violate the privacy or publicity rights of any third-party.
- Your Contributions do not include any offensive comments that are connected to race, national origin, gender, sexual preference, or physical handicap.
- Your Contributions do not otherwise violate, or link to material that violates, any provision of this License Agreement, or any applicable law or regulation.

Any use of the EMode Products and/or Content in violation of the foregoing violates this License Agreement and may result in, among other things, termination or suspension of your rights to use EMode Products.

7. CONTRIBUTION LICENSE

Feedback and Analytics

Any ideas, suggestions, or other feedback ("Feedback") provided to EMode is considered non-confidential. By submitting Feedback, you grant EMode a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with the right to sublicense) to use, modify, exploit, and publicly display such Feedback in connection with the EMode Products and Content.

To improve the operation, functionality, and use of EMode's existing and future products, and to commercialize those offerings. To publish aggregated statistics about software quality, without identifying you or your specific software code. You grant EMode and its partners the following rights, free of charge:

- Comply with law, enforce Terms, or address technical issues.
- Use, copy, and modify any feedback or information you provide regarding improvements to EMode Products and Content.
- Create derivative works based on your feedback and information.

This Agreement does not grant you any rights or licenses in the EMode Products, Content, or Intellectual Property Rights. Even if EMode incorporates your feedback into the software, you do not acquire any ownership rights. You irrevocably transfer and assign to EMode all of your right, title, and interest in and to all Feedback, including all Intellectual Property Rights associated with it.

We do not assert any ownership over Your Contributions. You retain full ownership of all of Your Contributions and any Intellectual Property Rights or other proprietary rights associated with Your Contributions. We are not liable for any statements or representations in Your Contributions provided by you in any area in the EMode Products. You are solely responsible for Your Contributions to the EMode Products and you expressly agree to exonerate us from any and all responsibility and refrain from any legal action against us regarding Your Contributions.

8. CONFIDENTIALITY

Confidential Information

This Agreement defines and protects Confidential Information, which encompasses sensitive data disclosed by either party.

- Designated Confidential: Information marked "confidential" or "proprietary" at the time of disclosure (written) or identified as such orally (summarized in writing within 30 days).
- Reasonable Confidentiality: Information not explicitly marked but understood to be confidential due to its nature and disclosure circumstances.

Examples of Confidential Information, includes but is not limited to: software products (source and byte code), authorization and encryption codes, documentation, product roadmaps, development plans, and Agreement terms, and order forms, business, marketing, technical, or training information.

Exclusions

Exceptions to confidentiality includes:

- Information that is already publicly known without a confidentiality breach.

- Information known to the Receiving Party before disclosure without a breach of obligation.
- Information lawfully received from a third party without a confidentiality breach.
- Information independently developed by the Receiving Party.

Use and Disclosure Restrictions

The Receiving Party will exercise reasonable care (no less than the care used for its own confidential information) to protect the Disclosing Party's Confidential Information. Use of the information is limited to purposes related to the Services provided under this Agreement. Access to Confidential Information is restricted to those who require it (e.g. employees, contractors) for the EMode Products and are bound by confidentiality obligations at least as strict as this Agreement.

The Receiving Party may disclose Confidential Information if legally required to do so. In such cases, the Receiving Party will provide prior written notice to the Disclosing Party (if legally permitted) and take reasonable steps to limit the disclosure. EMode may disclose your Confidential Information for legal or regulatory compliance (subpoenas, court orders, etc.), legal proceedings involving EMode, or at your request (you may be responsible for associated costs).

Right of Equitable Relief

In the event of a threatened or actual breach of this confidentiality section, the non-breaching party may seek injunctive or other equitable relief to protect its Confidential Information.

9. EMODE PROPRIETARY RIGHTS

The EMode Products and Content are commercially valuable assets owned by EMode. Their design and development reflect significant investments by EMode (e.g. time, expertise, and resources). EMode retains ownership of all copies of the EMode Products and Content, even after installation on your devices.

You acknowledge that EMode and its licensors own all rights to the EMode Products and Content including but not limited to:

- Proprietary Software and Algorithms:
 - The specific source code, algorithms, and functionalities behind our Licensed Software.
 - Internal Documentation explaining the design, development, and operation of our Licensed Software.
 - Trade secrets related to our Licensed Software's unique capabilities or optimization techniques.
- Research and Development Data:

- Raw data collected from experiments or simulations related to our internal projects.
- Analysis results, interpretations, and insights derived from our research and development efforts.
- Proprietary methodologies or protocols developed for conducting research.
- Client-Specific Information:
 - The specific details of custom research and development consulting projects undertaken for individual clients.
 - Proprietary solutions, designs, or recommendations developed for clients based on their unique needs.
 - Any non-public information about a client's business operations, goals, or challenges revealed during the consulting process.
- Additional Examples:
 - Intellectual Property (IP): Patent applications, invention disclosures, and other filings related to our technology.
 - Business Plans and Strategies: Internal documents outlining our future product roadmap, market expansion plans, or competitive strategies.
 - Marketing Materials and Customer Lists: Confidential marketing materials, customer lists, and pricing information not intended for public disclosure.
 - Any materials derived from the foregoing, including Metrics.

You will not disclose such information to third parties or use it beyond ordinary access and use of the Licensed Software as permitted. You will not access the EMode Products except through authorized interfaces or attempt to reverse engineer them. EMode may provide additional confidential information for access to EMode Products. This information is considered Confidential Information. You only have the rights expressly granted in these Terms and additional Terms. All other rights are reserved by EMode and its licensors. You will not take or authorize actions, with third-parties or otherwise, inconsistent with this section. Subject to the limited rights granted herein, EMode reserves all rights, title, and interest in the EMode Products and Content, including intellectual property. EMode collects and uses Processed Data (as defined in the Privacy Policy) related to your service usage. This data is used to enable, optimize, and improve the EMode Products. By using EMode Products, you agree to allow EMode to use suggestions and Your Contributions to generate Processed Data, subject to protections in Sections 5 (Use of Data) and 7 (Contribution License) and the Privacy Notice.

10. WARRANTY

Disclaimer

EMODE MAKES NO WARRANTIES (EXPRESS, IMPLIED, OR STATUTORY) TO YOU WITH RESPECT TO EMODE OFFERINGS. THE EMODE OFFERINGS ARE PROVIDED "AS-IS" AND "AS-AVAILABLE" AND WITH NO GUARANTEES OR TECHNICAL SUPPORT OBLIGATIONS FOR:

MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE, LACK OF VIRUSES, ERRORS OR INACCURACIES IN THE EMODE OFFERINGS, CONFORMANCE WITH DESCRIPTION, NON-INFRINGEMENT, UNAUTHORIZED ACCESS TO EMODE'S SERVERS OR YOUR INFORMATION, SERVICE INTERRUPTIONS OR TRANSMISSIONS, LOSS OF PROFITS, BUSINESS, OPPORTUNITY, DATA, COMPUTER USE, AND ANYTHING ELSE RESULTING FROM YOUR USE. You assume all risks for using the EMode Offerings, including data transfer and storage. EMode also disclaims warranties implied by trade usage, course of dealing, or course of performance. The EMode Offerings should not be solely relied upon for critical solutions. EMode disclaims all liability for such misuse to the fullest extent allowed by law. EMode's liability for death or personal injury resulting from negligence is not limited by this disclaimer. Neither EMode nor content owners warrant the EMode Offerings to be free of malware. EMode also disclaims any warranty regarding real-time provision of security features. EMode is not responsible for third-party applications or their content, user content, devices, products or services advertised through the EMode Offerings, and/or transactions with third-party providers. No advice or information from EMode creates any warranty. This section applies to the fullest extent permitted by law. Some jurisdictions may limit or exclude these warranty disclaimers.

Warnings

The EMode Products are tools for design, analysis, etc., and are not a substitute for your professional judgment or independent verification of EMode Products' outputs. Misuse of EMode Products could lead to faulty designs, inaccurate analysis, or other problems. EMode Products may not be suitable for all uses, and you are solely responsible for selecting appropriate services and programs to achieve your intended results. You are responsible for establishing independent procedures for testing the reliability, safety, accuracy, etc. of the output generated by EMode Products. EMode is not liable for any consequences arising from your use of EMode Products or Content, or the results they generate.

11. INDEMNIFICATION

Infringement Indemnity

You agree to indemnify and hold harmless EMode and its personnel (directors, employees, affiliates, etc.), to the fullest extent permitted by law from any harm (including losses, liabilities, costs, expenses, and reasonable attorneys' fees) resulting from:

- Your use of EMode Offerings.
- Your use of any Third-Party services connected to EMode Offerings.
- Your violation of this Agreement.
- Your violation of any other party's rights (including copyright, property, or privacy) registered or unregistered, anywhere in the world.
- Any claim that your content caused harm to another party.
- Your violation of any applicable laws or regulations.

Defense and Remedies

EMode reserves the right, in its sole discretion, to assume the exclusive defense and control of any claims arising from the above indemnification obligations. You agree to cooperate reasonably with EMode in defending such claims.

IP Claims

In the event of a third-party claim alleging that your content or use of the EMode Products or Content infringes Intellectual Property Rights or that your use of the EMode Products or Content violates any applicable law, breaches a contract, or causes harm, you agree to:

- Defend EMode and its affiliates against such claims.
- Indemnify EMode for any damages awarded against them and reasonable attorneys' fees incurred in connection with such claims.

EMode will promptly notify you of the claim and provide you with the option to control the defense and settlement, provided any settlement fully releases EMode from liability. EMode will also provide reasonable assistance at your expense.

Upon receiving an infringement claim, EMode may choose to:

- Modify or replace EMode Products or Content.
- Obtain a license for your continued use.
- Terminate your subscription.

Sole Remedy and Survival

This indemnification section defines the sole liability of You (the indemnifying party) and the exclusive remedy of EMode (the indemnified party) for any claims described herein. This indemnification obligation shall survive this Agreement and your use of EMode Products and Content.

12. LIMITATION OF LIABILITY

Cap on Liability

EMode's total liability to you, regardless of the cause or legal theory (contract, tort, etc.), is limited to One Hundred US Dollars (\$100.00 USD). This applies to all EMode Offerings licensed to you under the applicable End User License Agreement.

You acknowledge that EMode would not be able to provide the EMode Products or Content without the limitations set forth in this Section herein. This Section does not affect your rights under applicable mandatory local laws if such laws do not permit such limitations.

Exclusion of Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EMODE'S LIABILITY TO YOU AND ANY THIRD PARTY FOR ANY DAMAGES ARISING FROM THIS AGREEMENT IS STRICTLY LIMITED. THIS LIMITATION APPLIES REGARDLESS OF THE LEGAL THEORY USED TO BRING A CLAIM (CONTRACT, WARRANTY, NEGLIGENCE, ETC.), EVEN IF EMODE WAS INFORMED OF THE POTENTIAL FOR SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES. SPECIFIC EXAMPLES OF THESE EXCLUDED DAMAGES INCLUDE LOSS OF USE, DATA, BUSINESS PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS, OR THE COST OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES.

EMode's liability for breaches of this Agreement is limited to intentional misconduct and gross negligence. However, EMode will also be liable for ordinary negligence (carelessness) if it results in a breach of a fundamental term of this Agreement (a term that goes to the heart of the contract).

13. EXPIRATION AND TERMINATION

Term and Termination

This Agreement becomes effective upon your first use of Licensed Software and remains in effect until all Licensed Software provided hereunder terminate or expire. Free trials automatically end upon completion of the trial period. Each Purchasing Agreement will have its own specific term, as determined by the Licensing Period for the Licensed Software covered by that agreement.

Termination for Breach

Either party can terminate this Agreement or a Purchasing Agreement if the other party breaches a significant term of the Agreement. If the breach can be remedied, the breaching party has thirty (30) days to fix the issue after receiving written notice. Termination is also allowed if a party becomes insolvent, experiences bankruptcy-related proceedings, or assigns assets for the benefit of creditors. Termination of this Agreement under this section will also terminate all Purchasing Agreements and associated Licensed Software licenses.

Effect of Termination or Expiration

Upon termination or expiration of this Agreement or a Purchasing Agreement, all licenses for Licensed Software and rights to use Confidential Information granted under those agreements will cease. You will be required to:

- Promptly uninstall or destroy all applicable Licensed Software, Confidential Information, and any copies in your possession.
- Settle all outstanding fees up to the termination date.

- EMode reserves the right to delete your content (including backups) without notice.
- No subscription refunds will be issued.
- Termination by either party prohibits further access or use of the Licensed Software.
- You acknowledge that EMode has no liability to you (except as expressly provided).

EMode's Additional Termination Rights

In addition to the termination rights outlined above, EMode reserves the right to suspend or permanently terminate your access to all or part of the Licensed Software, in good faith and for any reason, including:

- Breaches of this Agreement by you or your Authorized Users (e.g., tampering with security, non-payment).
- Security risks, illegal activity, or harm caused on the Licensed Software, Content, or to users.
- EMode discontinuing or modifying any aspect of the Licensed Software, including technical support.
- Legal requirements necessitating such action.
- Conduct by you or your Authorized Users that creates potential liability or harm to users, third parties, EMode, or its affiliates.

Survival

To the extent permissible by applicable law, despite termination for any reason, certain provisions survive termination, including:

- Scope of License (Section 2).
- User-Generated Contributions (Section 6).
- Contribution License (Section 7).
- Confidentiality (Section 8).
- EMode Proprietary Rights (Section 9).
- Limitation of Liability (Section 12).
- Expiration and Termination (Section 13).
- This section (Survival).
- Third-Party Terms of Agreements (Section 14).
- Applicable Law (Section 15).
- Miscellaneous (Section 16).
- Definitions (Section 17).

14. THIRD-PARTY TERMS OF AGREEMENTS

Terms for Third-Party Software

The Licensed Software may integrate open-source software ("Open Source Software") subject to separate licensing terms ("Third-Party Agreements"). These terms are available at:

<https://emodephotonix.com/legal/>. By using the Licensed Software, you acknowledge and agree that all Open Source Software is subject to its own independent licensing terms. You are solely responsible for finding, obtaining, and complying with these Third-Party Agreements. EMode bears no responsibility for, and makes no warranties regarding, any Third-Party material/services or their associated terms. Compatibility of these materials with the Licensed Software is not guaranteed.

If no separate Third-Party Agreements are provided, your use of the material is subject to the following:

- The same terms as the Licensed Software through which you received it.
- Use in connection with that specific Licensed Software.
- Limited to the duration of your subscription.

In instances where you authorize the sharing of Your Contributions with a third party, EMode may facilitate such sharing by making Your Contributions available to them. However, materials governed by Third Party Agreements are provided "as-is" and without warranty, indemnification, support, or any other representation by EMode. EMode assumes no responsibility or liability for the actions of any third party with respect to such materials and/or Your Contributions. You are solely responsible for managing the appropriate level of access granted to third parties for Your Contributions. EMode has no obligation to monitor or edit Content. However, EMode reserves the sole right to refuse or remove any Content at any time.

Disclaimer

THE OPEN SOURCE SOFTWARE IS PROVIDED "AS-IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY. THIS INCLUDES, BUT IS NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EMODE AND THE LICENSORS OF THE OPEN SOURCE SOFTWARE ARE NOT LIABLE FOR ANY DAMAGES ARISING FROM THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, REGARDLESS OF THE CAUSE OR LEGAL THEORY UNDER WHICH SUCH LIABILITY IS CLAIMED. THIS INCLUDES DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS). EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THIS DISCLAIMER APPLIES. Copyrights to the Open Source Software are held by the copyright holders identified within the corresponding source files.

Plug-Ins

Customers with valid licenses can use Plug-Ins designed for the Licensed Software. No additional purchase agreements are required for these Plug-Ins. Your right to use Plug-Ins is governed by the terms of this Agreement, including the limited license grant in Section 2. EMode's obligations under Sections 10 and 11 regarding Plug-Ins apply only if:

- EMode developed the Plug-In itself.
- EMode implemented the Plug-In specifically for you.

These obligations do not extend to issues arising from:

- Your own IT environment.
- Modifications made by third-party programs used with the Plug-In (collectively referred to as "Modified Plug-Ins").

Disclaimer

ALL MODIFIED PLUG-INS ARE PROVIDED "AS-IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY. THIS INCLUDES, BUT IS NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EMODE AND THE LICENSORS OF MODIFIED PLUG-INS ARE NOT LIABLE FOR ANY DAMAGES ARISING FROM THE USE OR DISTRIBUTION OF THE PLUG-IN, REGARDLESS OF THE CAUSE OR LEGAL THEORY UNDER WHICH SUCH LIABILITY IS CLAIMED. THIS INCLUDES DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS). EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THIS DISCLAIMER APPLIES.

15. APPLICABLE LAW

This Agreement is governed by the laws of the State of Colorado (excluding conflict of law rules) and the United States of America. The United Nations Convention on Contracts for the International Sale of Goods is excluded.

For disputes arising in the United States and its territories, the state and federal courts of Colorado have exclusive jurisdiction. You consent to personal jurisdiction and venue in Denver, Colorado. For international customers outside the US and its territories, disputes not resolved through informal dispute resolution within sixty (60) days after notification will be settled through arbitration administered by the International Centre for Dispute Resolution (ICDR) in Denver, Colorado will be used, with English as the language. The award will be final and binding.

16. MISCELLANEOUS

Export Control

EMode Offerings are subject to U.S. export control laws and regulations. These laws may restrict download, export, re-export, or transfer of EMode Offerings to certain countries, users, or for specific uses. You are responsible for complying with all relevant export control laws and regulations and obtaining any necessary export licenses, including those of the U.S. (e.g., ITAR, EAR) and other countries. This includes restrictions on:

- Accessing EMode Offerings from sanctioned locations or by restricted parties.

- Using EMode Offerings for prohibited purposes (e.g., weapons development) without proper authorization.
- Uploading classified information or content subject to export controls.

EMode may suspend your access to EMode Offerings for non-compliance with export control requirements. EMode Offerings themselves may also be subject to export controls.

You warrant that you are not located in or a citizen of a sanctioned country, are not on any restricted party lists, and will not use EMode Offerings for any prohibited purposes (e.g., ITAR-restricted activities). EMode reserves the right to update export control requirements based on U.S. regulations. You agree to indemnify EMode for any violations of these export control provisions. You agree to comply with all applicable export control laws and regulations. This Export Control Clause remains in effect even after this Agreement terminates.

No Assignment

This Agreement cannot be assigned by you without EMode's prior written consent. However, EMode may assign its rights under the Agreement. Restrictions on Your Assignment: You are prohibited from assigning or otherwise transferring this Agreement, your rights, or obligations under it (by operation of law or otherwise) without obtaining EMode's prior written consent. This restriction applies to all forms of transfer, including mergers, acquisitions, consolidations, reorganizations, or changes in control. EMode reserves the right, in its sole discretion, to withhold or deny consent to any assignment.

EMode may assign its rights and obligations under this Agreement, in whole or in part, without your prior consent or notice. This includes assignments made in connection with a reorganization, merger, sale of assets, or other transaction involving all or a portion of the EMode Offerings or related business.

In the event of a permitted assignment by either party, the terms of this Agreement will continue to be binding upon and inure to the benefit of the respective assignee or transferee. The Agreement is binding on permitted successors of both parties.

Non-exclusive Remedy

The exercise of any remedy under this Agreement by either party will not be construed as a waiver of any other remedy provided herein or otherwise available at law or in equity.

Force Majeure

Neither party is liable for delays or non-performance caused by unforeseen events beyond reasonable control ("Force Majeure"). These events include: acts of God (earthquake, flood, etc.), pandemics, war, civil unrest, labor disruptions (strikes, lockouts), government actions (sanctions, embargoes), infrastructure failures (internet, power), severe weather. The affected party must notify the other party promptly (in writing if possible). Performance deadlines will



be extended by the duration of the Force Majeure event. If Force Majeure prevents performance for more than 90 days, either party may terminate the Agreement (or the affected portion) with written notice.

Agreement Modification

We can modify this Agreement (including any policies) by posting a revised version on our website (<https://emodephotonix.com/legal/>). We will provide at least 90 days' advance notice for any modifications that could significantly impact EMode Offerings. Modifications will become effective immediately following the notice.

Notices

Notices may be delivered by electronic mail, postal service, or a reputable commercial delivery service (such as UPS, FedEx, or DHL).

EMode will send notices to the email address or physical address you provide on your EMode account. Notices by email are effective upon EMode's confirmation of receipt, while notices by mail or delivery service are effective five (5) days after dispatch. You consent to service of process being delivered to the address set forth on your EMode account if permitted by applicable law.

Notices to EMode can be sent to hello@emodephotonix.com via email. Alternatively, notices can be sent by mail or delivery service to EMode Photonix LLC, 315 S 38th St, Boulder, Colorado 80305, United States. Notices by email are effective upon EMode's confirmation of receipt, while notices by mail or delivery service are effective upon receipt by EMode.

Entire Agreement, Modification, and Interpretation

This Agreement is the entire agreement between you and EMode, superseding all prior agreements. This includes any discussions, communications, representations, or warranties related to the subject matter. Any additional agreements or special terms will become part of this Agreement by reference.

Waiver

A waiver of any breach or default hereunder will not be deemed a waiver of any other right under this Agreement, nor will it be considered a waiver of any subsequent breach or default. Any waiver must be made in writing and signed by an authorized representative of the party against whom the waiver is sought to be enforced. The failure to exercise, or any delay in exercising, any remedy for a breach of this Agreement shall not constitute a waiver of such breach.

Government Users

For procurements by the United States Government, all Licensed Software are classified as commercial computer software as defined in FAR 12.212. Their use, modification, reproduction, release, performance, display, or disclosure by the U.S. Government is subject to the restricted rights outlined in FAR Section 52.227-19 ("Commercial Computer Software - Restricted Rights") and, if applicable, DFARS 227.7202 ("Rights in Commercial Computer Software or Commercial Computer Software Documentation"), along with any successor regulations. The license rights and restrictions described in this Agreement govern all such activities by the U.S. Government.

Independent Contractors

Both parties acknowledge and agree that they are acting as independent contractors under this Agreement. This Agreement does not create, nor shall it be construed to create, any franchise, association, partnership, or joint venture between the parties.

EMode is not, and shall not hold itself out to be, your agent, legal representative, or partner. EMode will not assume or purport to create any obligations on your behalf except as expressly provided in this Agreement. Similarly, you are not, and shall not hold yourself out to be, an agent, legal representative, or partner of EMode, and you will not assume or purport to create any obligations on behalf of EMode.

Severability

If any provision of this Agreement is found to be unenforceable, the remaining provisions will still be valid. A court will attempt to modify the unenforceable provision to make it legal, while still reflecting the original intent of the Agreement. If modification is not possible, the unenforceable provision will be severed (removed) from the Agreement, but the rest of the Agreement will remain enforceable.

Controlling Language

This Agreement and all related documents, including any notices provided hereunder, shall be drawn up and construed solely in the English language.

17. DEFINITIONS

“EMode Services” (or “Services”) means the services provided by EMode, electronically or otherwise, that are separate from the EMode Products and EMode Content. These services may include, but are not limited to:

- Technical Support (limited to premium EMode Products): Technical assistance offered to users regarding the use of EMode Products.



- Consulting Services: Custom consulting engagements offered by EMode to assist users with specific needs related to EMode Products.

“Site” means the online platform accessible through <https://emodephotonix.com> that provides functionalities including:

- User Account Management: This allows users to register, create profiles, edit account information, and manage login credentials.
- EMode Account: An account created by a user on the Site. This account is used to access certain functionalities, including:
 - Purchase processing: Ability to purchase EMode Offerings (e.g., EMode Products, Services) through the Site.
 - Software download: Access to download and install copies of EMode Software.
 - Subscription management: Ability to view, manage, and renew subscriptions for EMode Products or Services.

“EMode Products” (or “Licensed Software”) means the software applications and related materials distributed by EMode electronically or physically. EMode Products include, but are not limited to:

- EMode Software: The core software application, provided as a compiled executable and distributed through the Site via an installer package.
- Open-Source Packages: The Python and MATLAB packages offered by EMode to facilitate communication with the EMode Software. These packages are distributed under the BSD 3-Clause License.
- License Manager: A cloud-based software application that manages the licensing of EMode Products for end-users. The License Manager controls and verifies the user's license entitlements for the EMode Software and may interact with the EMode Software during installation or use.

“EMode Content” (or “Content”) means the informational materials and resources provided by EMode in various formats, electronically or physically. EMode Content includes, but are not limited to:

- Documentation: User manuals, tutorials, or any other instructional materials provided about EMode Software functionality and usage.
- Example Scripts: The Python and MATLAB scripts offered as examples of how to interface with EMode Software. These scripts are licensed under the BSD 3-Clause License.
- Website Content: Informational content on the Site excluding functionalities related to user accounts, purchases, downloads, and subscription management (covered under "Site"). This could include information about EMode Products, services, company, or technology.

“EMode Offerings” means EMode Services, EMode Products, Content, or any Support, or Deliverables furnished under this License Agreement.



“Purchasing Agreement” means the agreement between you (the user) and EMode, electronically or otherwise, that governs the purchase and licensing of EMode Offerings. The Purchasing Agreement specifies the following:

- EMode Offerings: A description of the specific EMode Offerings you are purchasing, including the type of EMode Products (e.g., free or paid version) and any additional services or content included.
- Licensing Period: The duration for which you are granted a license to use the EMode Products and EMode Content. This period may be for a specific term (e.g., monthly, yearly subscription).
- Payment Terms: The method and timing of payment for the EMode Offerings. This may include details about the amount payable, accepted payment methods (e.g., credit card, invoice), and any applicable taxes.

“Territory” means the specific geographic region or country where the customer is authorized to acquire and use the EMode Products and Content under this Agreement. This may be a single country, a group of countries (e.g., North America), or a worldwide territory.

“Authorized Users” means individuals who are authorized by the Customer (the licensee) to access and use the EMode Products on the Customer's behalf. The Customer is responsible for ensuring that Authorized Users comply with the terms and conditions of this Agreement.

“Updates” means modifications or revisions to the EMode Products provided by EMode electronically or otherwise, which:

- Fix errors or bugs in the existing functionality.
- Improve the performance or stability of the EMode Products.
- Do not introduce significant new features or functionalities.

Updates are typically provided to Customers free of charge and may be mandatory to maintain continued use of the EMode Products.

“Upgrades” means new versions of the EMode Products offered by EMode electronically or otherwise, which:

- Introduce significant new features or functionalities that are not present in the previous version.
- May or may not improve the performance or stability of the EMode Products.

Upgrades may be offered for free or may require an additional fee, depending on the Customer's licensing agreement and the specific upgrade.

“Computing Device” means a physical or virtual machine that processes information electronically.

- Physical Computing Device: An electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions. This includes, but is not limited to, desktops, laptops, tablets, and servers.

- **Virtual Computing Device:** A software program that emulates the functionality of a physical computing device. This virtual machine accepts digital information and manipulates it based on a set of instructions to produce a specific outcome.

“Embargoed Regions” means the countries or territories identified by the United States government as subject to comprehensive or selective trade sanctions or embargoes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) or the U.S. Department of State's Bureau of Industry and Security (BIS).

“Confidential Information” means information that is not generally known to the public and is disclosed by a Disclosing Party to a Receiving Party in writing and designated as Confidential in writing. This excludes information that: (i) is already public knowledge, (ii) was known to the Receiving Party beforehand without a confidentiality obligation, (iii) is lawfully obtained from a third party without a confidentiality obligation to the Disclosing Party, or (iv) was independently developed by the Receiving Party. Additionally, your contributions to or access granted to third parties through EMode Offerings, and any feedback you provide, are not considered EMode's Confidential Information. Conversely, EMode's Confidential Information includes but is not limited to the non-public aspects of their services, related product plans, technical information, and details of business negotiations. Refer to Section 8 of this Agreement for more information.

“Your Contributions” (or “Feedback”) means any content and materials you (or someone authorized by you) submit, post, display, or upload to any EMode Offerings, including but not limited to text, writings, video, audio, photographs, graphics, comments, suggestions, or personal information. This includes the specific results or creations generated from using any EMode Offerings, but only if those results are based on your own raw data or information.

“Intellectual Property Rights” are a category of legal rights that protect intangible creations of the human intellect (including Trade Secrets, Trademarks, Copyrights, and Patents). These rights give the creator or owner the exclusive right to control how their creation is used, for a certain period of time.

“Receiving Party” refers to the party that is receiving the confidential information from the Disclosing Party. They are obligated to maintain the confidentiality of the information according to the terms of this Agreement and the confidentiality Section 7.

“Disclosing Party” refers to the party that owns or controls the confidential information being shared. They are the party granting access or disclosing the information to another party.