

ETACSource Licence 2 (ES-Lic-2)

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Software Licence Agreement

ATTENTION READER: The reader must read and agree to satisfy and abide by all the terms and conditions in this **Software Licence Agreement** document before the reader will be granted a licence for the accompanying software. If the reader does not agree with any one or more of the terms and conditions, or if the reader is not legally qualified to enter into a legal agreement, then the reader will not be granted a licence. By using the software in any way whatsoever, the reader agrees to be legally bound by the terms and conditions mentioned above.

IMPORTANT: The reader must pay particular attention to those sections marked in **red bold** type, especially those sections concerning **warranties, disclaimers, and liabilities**.

1. **Definitions**

auxiliary licence agreement

The terms and conditions stated in the **Software Licence Agreement** of the **ECGTemplate Licence 1** (ECGT-Lic-1) document.

adapted code

- (a) A version of the *ETAC source code* (whether or not the version is in the language, code, or notation in which the *ETAC source code* was originally expressed) not being a reproduction of the *ETAC source code*, or
- (b) a translation of the *ETAC source code*.

contract

The agreement between the *licensee* and *original licensor*, which is based on a single set of terms and conditions, is composed, exclusively, of all the following:

- (a) The *licence agreement*,
- (b) any relevant, express, and enforceable terms or conditions necessarily required to be included by applicable law, and
- (c) any altered, deleted, or added terms or conditions expressly made, in relation to the *licence agreement* with a particular *licensee*, with the written consent of the *original licensor*.

ETAC source code

Any or all of the ETAC text script files originally extracted or installed from the *ETACSource Package*.

ETACSource Package

This consists of all or any of the following items if and when they exist.

- (1) The contents of the self-extracting packed file called ETACSource_..._Installer.exe existing within the file ETAC_Installers_....zip, and also the ETAC_Preliminaries.pdf file existing within the file ETAC_Installers_....zip.
- (2) The files unpacked or installed from the ETACSource_..._Installer.exe file mentioned at paragraph (1), and also the unpacked ETAC_Preliminaries.pdf file mentioned at paragraph (1).
- (3) The files and/or data automatically created as a result of the normal use of any of the executable files mentioned or implied at paragraphs (1) and (2), excluding files originally created by the *licensee*.
- (4) Copies, reproductions, adaptations, and translations (if any) made by the *licensee* of any of the files and/or data mentioned or implied at paragraphs (1), (2), and (3).
- (5) The following items, if they exist, contained or embodied in any of the files and/or data mentioned or implied at paragraphs (1), (2), (3), and (4): photographs, images, logos, graphics, diagrams, animation, video, audio, music, and text.

legal organisation

A legally recognised and registered organisation where the members are formally registered by that organisation.

licence

The permissions granted by the *original licensor* to the *licensee* to use (and reproduce, where permitted) the *ETACSource Package* for the purposes and in the manner specified in the *licence agreement*.

licence agreement

The terms and conditions stated in this **Software Licence Agreement** document and the *auxiliary licence agreement*.

licensee

The person to whom a *licence* is granted by the *original licensor*.

mass distribute

To make available to the public by any means. The “public” means any one or more individual human persons who are not identifiable by the *licensee*.

original licensor

The original designer and creator of the ETAC system, namely, Victor Vella.

qualified person

An individual human person who has the legal capacity to contract (ie: is legally qualified to enter into a legal agreement). A legal entity (such as, for example, a company, business, or organisation) is not a *qualified person* by this definition. Note that in most countries, a person under the age of eighteen years is not a *qualified person*.

WARNING

The *ETACSource Package* is protected by copyright and intellectual property laws. Unauthorised reproduction, alteration, or distribution of all or any part of the *ETACSource Package* is a serious offence against the Copyright Act or international copyright treaties. Criminal penalties may apply to offenders.

2. General

- 2.1 This **Software Licence Agreement** document states the terms and conditions for a legal agreement between the *licensee* and the *original licensor* for a worldwide, royalty-free, non-transferable, non-exclusive *licence*.
- 2.2 The set of terms and conditions stated in the definition of *contract* is the entire set of terms and conditions of the *contract*. Any other express, implied, or represented terms or conditions are not part of the set of terms and condition of the *contract*.
- 2.3 The *contract* begins (and is legally binding) if and when a *qualified person* executes or unpacks the original self-extracting packed file (ETACSource_..._Installer.exe) stated at sub-definition (1) of *ETACSource Package* and has read, satisfies, and agrees to abide by the *licence agreement*. Making any use whatsoever of the *ETACSource Package*, or any part of it, indicates that the *qualified person* agrees to be legally bound by the *licence agreement*.
- 2.4 If a *qualified person* does not read, satisfy, or agree to abide by the *licence agreement*, or if a person is not a *qualified person*, then no *contract* is formed and no *licence* is granted, and the *ETACSource Package* must be totally destroyed.
- 2.5 The *licence agreement* shall not be construed to (and does not purport to) exclude, restrict, or modify any condition, warranty, guarantee, right, or remedy implied by applicable law that cannot lawfully be excluded, restricted, or modified.

- 2.6 In the event that one or more clauses of the *licence agreement* is held by a Court of Law to be invalid or unenforceable, the remaining clauses shall not be affected in any way.
- 2.7 The *licence agreement* cannot be varied without the written express agreement of the *original licensor*.
- 2.8 The *original licensor* can publish changed details of this **Software Licence Agreement** document at any time without notice to the *licensee*. Such changes will be indicated by different *licence agreement* version numbers.
- 2.9 The duration of the *licence* is the same as the duration of the *contract*.
- 2.10 Rights not expressly granted in the *licence agreement* are entirely and exclusively reserved by and to the *original licensor*.
- 2.11 The title and ownership to and in all or any part of the *ETACSource Package* (including all copies made from the *ETACSource Package* and all copies of the ETAC_Installers_....zip file) shall not pass from the *original licensor* to the *licensee*, and shall remain entirely (except for such parts for which is expressly indicated otherwise) with the *original licensor*.
- 2.12 The *original licensor* owns the copyright and other intellectual rights to and in all or any part of the *ETACSource Package* exclusively, except for such parts for which is expressly indicated otherwise (in which case the copyright may not be exclusive).

3. Licensee Agreement

3.1 Interpretation

- 3.1.1 The *licensee* or his/her legal representative or advisor shall not construe the words in this document for the purpose of exploiting the *original licensor* or the *ETACSource Package*, or for the purpose of attempting to avoid performing or abiding by any term, condition, or obligation stated in the *licence agreement*.

3.2 Responsibility of Usage

- 3.2.1 The *licensee* shall make sure that each and every user of the *ETACSource Package* is familiar with the *licence agreement*.
- 3.2.2 The *licensee* is totally responsible for any breach of the *contract* performed by each and every user of all or any part of the *ETACSource Package* (or any such copy, reproduction, adaptation, or translation) to which this *licence* applies.

3.3 Software Support

- 3.3.1 The *original licensor* is not entitled to provide support of any kind for the *ETACSource Package*.

3.4 Replacement, Modification, and Update

- 3.4.1 The *original licensor* reserves the right to replace, modify, update, or upgrade the whole or any part of the *ETACSource Package* for distribution at any time.
- 3.4.2 If any software, code, or supporting materials acquired by the *licensee* pursuant to clause 3.4.1 is an update or upgrade of the whole or any part of an installed *ETACSource Package*, then those acquired items are considered to be part of the *ETACSource Package* being updated or upgraded and are subject to:
- (a) the *licence agreement* if: (i) no **Software Licence Agreement** is associated with the acquired items or (ii) the **Software Licence Agreement** associated with the acquired items is of an earlier version than the current one in force; otherwise (if neither (i) nor (ii) apply)
 - (b) the **Software Licence Agreement** associated with the acquired items.
- 3.4.3 If an acquired item pursuant to clause 3.4.2 is associated with a later version of the *licence agreement* than the one in force, then that later version of the *licence agreement* supersedes the existing *licence agreement*, otherwise the existing *licence* remains in force. (See clause 3.8.2.)

3.5 Limitation of Liabilities

- 3.5.1 **To the maximum extent permitted by applicable law, the licensee shall release and indemnify the original licensor against any loss or liability incurred by the original licensor arising from, or in any way whatsoever relating to any action, proceeding, costs, claim, demand, or prosecution in**

relation to, or connected with:

(a) the *ETACSource Package*, or

(b) any matter or issue relating to the *licence agreement*,

even if the said events occur after the *contract* has been discharged for any reason.

3.5.2 To the maximum extent permitted by applicable law, the *original licensor* shall not be liable to the *licensee*, or to any other person or entity, at any time (even after the *contract* has been discharged for any reason) for any of the following:

3.5.2.1 direct, indirect, consequential, incidental, punitive, exemplary, special, commercial, economic, psychological, personal, or any other loss\es or damage\s suffered, or that may be suffered, arising out of or in connection with the use, inability of use, reliance upon, or otherwise, of the *ETACSource Package*, or information (in whole or in part) presented in, or connected with, the *ETACSource Package*, whether or not the *original licensor* has been advised of the possibility of, or foreseen, such loss\es or damage\s,

3.5.2.2 software or information errors, malfunctions, inaccuracies, omissions, or any other faults whatsoever in the *ETACSource Package* or information (in whole or in part) presented in, or connected with, the *ETACSource Package*, whether or not the *original licensor* has direct control of, or has knowledge of, such software or information errors, malfunctions, inaccuracies, omissions, or faults,

3.5.2.3 any other matter or issue whatsoever relating to the *contract*, including, but not limited to, breach of any term\s or condition\s of the *contract* by the *original licensor*.

3.5.3 To the extent permitted by applicable law, the maximum aggregate liability of the *original licensor* to the *licensee*, for any reason whatsoever relating to the *contract*, is limited to the purchase price of the *ETACSource Package* (which is zero dollars).

3.6 Disclaimer and Exemption of Warranty

3.6.1 The *ETACSource Package* is provided to the *licensee* "AS IS". The *original licensor* makes no claim or representation of performance, continuity, or results being obtained by any use of the *ETACSource Package*, or information (in whole or in part) presented in, or connected with, the *ETACSource Package*.

3.6.2 No warranty, condition, term, or representation (including, but not limited to, any warranty of satisfactory quality, merchantable quality, merchantability, or fitness for a particular purpose), express or implied whether by statute, common law, custom, usage, or otherwise, is made by the *original licensor* with respect to the *ETACSource Package*, except for those warranties, conditions, terms, or representations that are not permitted to be excluded or limited under applicable law.

3.7 Breach of Agreement by Licensee

3.7.1 If the *licence agreement* is breached by the *licensee*, the *licence* and the *contract* may be terminated by the *original licensor*, and the *licensee* may be liable to the *original licensor* for any or all costs involved in the termination and legal process\es relating to the breach.

3.8 Discharge (termination) of Contract

3.8.1 If the *licensee* fails to satisfy or abide by any term or obligation of the *contract*, the *contract* is discharged automatically.

3.8.2 The *contract* is discharged automatically if a *licence* corresponding to a later version of the associated *licence agreement* pursuant to clause 3.4.3 is granted (in this case, clause 3.8.4 does not apply), otherwise if the *licence* is not granted or the said *licence agreement* is not of a later version, then the *contract* is not discharged.

3.8.3 When the *contract* is discharged the *licence* is terminated simultaneously.

3.8.4 When the *licence* is terminated, the *licensee* shall immediately cease all use of the *ETACSource Package* and destroy the *ETACSource Package* and all of its parts (including all copies, reproductions, adaptations, and translations of the *ETACSource Package* whether or not they were made for backup or archival purposes).

3.8.5 If the *contract* is discharged pursuant to clause 3.8.1, the *licensee* shall not re-enable the *contract* or agree to a new *contract* in any way or by any means except with the prior express consent of the *original licensor*.

3.9 Jurisdiction

3.9.1 To the extent permitted by law, the *contract* shall be governed by, and construed in accordance with, the laws in force in the State of Western Australia and the Courts in that State shall have jurisdiction.

4. The Original Licensor Agreement

4.1 The ETACSource Package

4.1.1 The *original licensor* shall provide use of the *ETACSource Package* to the *licensee* subject to the terms and conditions of the *contract*.

4.1.2 The *original licensor* shall take due and reasonable care in constructing the *ETACSource Package* to substantially operate in accordance with the relevant *ETACSource Package* documentation.

4.2 Decisions by the Original Licensor

4.2.1 The *original licensor* shall make decisions entitled by the *licence agreement* in a fair and impartial manner as is practical.

5. Rights Granted to the Licensee

5.1 Usage and Copying

5.1.1 The *licensee* may install the *ETACSource Package* onto any suitable computer\ s that is\ are within his\ her control. (NOTE: this is not a transfer of *licence* or ownership of the *ETACSource Package*.)

5.1.2 The *licensee* is responsible for any and all installations made pursuant to clause 5.1.1.

5.1.3 The *licensee*, or a person authorised by the *licensee*, may use the *ETACSource Package* in accordance with the relevant *ETACSource Package* documentation or other relevant ETAC documentation.

5.2 Distribution of the ETACSource Package

5.2.1 The *licensee* may distribute only exact binary copies of the original packed file ETAC_Installers_....zip, stated at sub-definition (1) of *ETACSource Package*, to any number of *qualified persons* identifiable by the *licensee*, subject to all of the following conditions:

5.2.1.1 The *qualified person* to whom the ETAC_Installers_....zip file is to be distributed must be identifiable by the *licensee* before that *qualified person* gets access to the distributed ETAC_Installers_....zip file.

5.2.1.2 The *licensee* shall bring to the recipient's attention that the recipient's use of the *ETACSource Package* is subject to a **Software Licence Agreement** which is included in the self-installation files within the distributed packed file (ETAC_Installers_....zip) and which must be read and agreed to before installing the *ETACSource Package*.

5.2.1.3 The *licensee* shall not charge a fee, request donations, receive payments, or receive any other remuneration for the packed file (ETAC_Installers_....zip) itself or its contents, or for distributing the packed file, or for the labour involved in preparing the packed file for distribution.

5.2.1.4 The *licensee* shall distribute only the latest version of the packed file (ETAC_Installers_....zip) if he\ she has more than one version. (The ellipsis in 'ETAC_Installers_....zip' indicates the version.)

5.2.1.5 The *licensee* shall not separate, or allow the separation of, the component parts of the *ETACSource Package* for distribution. The packed file (ETAC_Installers_....zip) may only be distributed as a unit.

5.2.1.6 The *licensee* shall not distribute the packed file (ETAC_Installers_....zip) together with any illegal software (including, but not limited to, any infringing software) or other illegal items.

5.2.2 The *licensee* shall not allow the *mass distribution* of the ETAC_Installers_....zip file or all or any part of the *ETACSource Package* (or any such copy, reproduction, adaptation, or translation) without the prior express consent of the *original licensor*.

- 5.2.3 The *licensee* shall not allow the ETAC_Installers_....zip file or all or any part of the *ETACSource Package* (or any such copy, reproduction, adaptation, or translation) to be distributed, exported, or re-exported to or from any country in violation of any applicable import or export laws or regulations of that country.
- 5.2.4 If and when, for any reason, the *licensee* is permitted to distribute the ETAC_Installers_....zip file, or any copy of that file, the *licensee* shall promptly, prominently, and expressly bring to the recipient's attention that:
- (a) "the title, ownership, copyright, and other intellectual rights to and in the ETAC_Installers_....zip file and its contents belong exclusively (except for such contents for which is expressly indicated otherwise) to the original designer and creator of the ETAC system", and
 - (b) "the ETAC_Installers_....zip file may not be copied or distributed for any purpose or reason without agreeing to the relevant **Software Licence Agreement** included within that file".

5.3 Distribution and Modification of the ETAC Source Code

- 5.3.1 The *licensee*, or any *qualified person* who is a registered member of the same *legal organisation* to which the *licensee* is a member, may create (or modify) and distribute *adapted code* for use only within the said *legal organisation*, subject to clause 5.3.3.
- 5.3.2 The *licensee*, or any member of the household to which the *licensee* belongs, may create (or modify) *adapted code* for use only within the said household, subject to clause 5.3.3.
- 5.3.3 Clauses 5.3.1 and 5.3.2 are subject to the following conditions:
- 5.3.3.1 The *licensee* shall prominently and expressly bring to the user's attention that the user's use of the *adapted code* is subject to this *licence agreement* which must be read and agreed to by the user before using the *adapted code*.
- 5.3.3.2 Any documentation or communication pertaining to any *adapted code* shall not purport to delete, modify, reinterpret, circumvent, cancel, or override any term or condition of this *licence agreement*.
- 5.3.3.3 The *licensee* shall not charge a fee, request donations, receive payments, or receive any other remuneration for any *adapted code*, or for distributing any *adapted code*, or for the labour involved in preparing any *adapted code* for distribution. This clause applies also to all copies of any *adapted code*.
- 5.3.3.4 The *licensee* shall not use or distribute any *adapted code* together with any illegal software (including, but not limited to, any infringing software) or other illegal items.
- 5.3.3.5 Each modification of any *ETAC source code* or *adapted code* must be indicated by a variation record showing the date of, the initials of the author of, and the nature of the modification. The variation record must be placed at the top of the modified file beneath existing variation records.
- 5.3.3.6 Existing copyright, trademark, attribution, licence, variation records, or other legal notices within any *ETAC source code* or *adapted code* must not be altered or deleted.
- 5.3.4 The *licensee* shall not allow any use or distribution of any *adapted code* or any copyrightable part of the *ETAC source code* (or any such copy, reproduction, adaptation, or translation), whether part of a larger work or not, outside of the *legal organisation* or household mentioned in clauses 5.3.1 and 5.3.2 without the prior express consent of the *original licensor*.

5.4 Backup Copies

- 5.4.1 The *licensee*, or a person authorised by the *licensee*, may make a copy of the original packed file ETAC_Installers_....zip, stated at sub-definition (1) of *ETACSource Package* for private archival purposes.
- 5.4.2 The *licensee*, or a person authorised by the *licensee*, may periodically make a copy of the *ETACSource Package* as part of a general backup and recovery procedure.

6. Rights Prohibited or Restricted

6.1 General

- 6.1.1 The *licensee* shall not rent, lease, lend, sublicense, or assign all or any part of the *ETACSource Package*, or allow it to be such, to any person or entity whatsoever.

6.1.2 The *licensee* shall not allow all or any part of the *ETACSource Package* to be used or involved in any violation of any applicable laws or regulations.

6.2 Alteration and Disclosure

6.2.1 Except to the absolute minimum extent expressly permitted by the relevant Copyright Act, copyright law, or international copyright treaty, and notwithstanding the instructions within the documentation of the *ETACSource Package* or the rights granted by the *licence*, the *licensee*, or any other person, shall **not**:

6.2.1.1 decompile, disassemble, decrypt, or reverse engineer all or any part of the *ETACSource Package*,

6.2.1.2 adapt, alter, translate, create derivative works based on, or create adaptations of all or any part of the *ETACSource Package*.

6.2.1.3 alter or delete any copyright, trademark, attribution, licence, variation records, or other legal notices within the *ETACSource Package*.

6.2.2 If the *licensee*, or any other person, is permitted by applicable law to do an act pursuant to clause 6.2.1 (and its subclauses), then he\she shall make a reasonable attempt to inform the *original licensor* of such an act before it occurs.

6.2.3 If the *licensee*, or any other person, is permitted by applicable law to do an act specified in clause 6.2.1.1, then he\she shall not disclose all or any part of the information obtained from such an act to any other person\entity who\which does not absolutely and necessarily need to know that information.

6.2.4 The internal structure, organisation, and code of the *ETACSource Package* are valuable trade secrets and confidential information of the *original licensor*, and shall not be disclosed to any person or entity without the prior express consent of *original licensor*.

6.3 Marketing

6.3.1 The *licensee* or any user of the *ETACSource Package* shall not use the name of the *original licensor* or use logos or trademarks owned by the *original licensor* to endorse, promote, or market any product\products produced by the use of the *ETACSource Package*, and which (product\products) are not owned by the *original licensor*, without the prior express permission of the *original licensor*.

6.4 Transfer of Licence or Copyright

6.4.1 The *licence* or the copyright to and in the *ETACSource Package* shall **not** be transferred or assigned to any person or entity under any circumstances whatsoever.