

END-USER LICENSE AGREEMENT FOR ENCORE SYSTEMS, LLC SOFTWARE

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1. Software Covered by this EULA. This EULA governs your use of the ENCORE SYSTEMS, LLC ("ENCORE") software product(s) enclosed or otherwise accompanied herewith (individually and collectively, the "SOFTWARE"). The term "SOFTWARE" includes, to the extent provided by ENCORE: 1) any revisions, updates and/or upgrades thereto; 2) any data, image or executable files, databases, data engines, computer software, or similar items customarily used or distributed with computer software products; 3) anything in any form whatsoever intended to be used with or in conjunction with the SOFTWARE; and 4) any associated media, documentation (including physical, electronic and on-line) and printed materials (the "Documentation").

2. This EULA is a Legally Binding Agreement Between You and ENCORE. If you are acting as an agent of a company or another legal person, such as an officer or other employee acting for your employer, then "you" and "your" mean your principal, the entity or other legal person for whom you are acting. However, importantly, even if you are acting as an agent for another, you may still be personally liable for violation of federal and State laws, such as copyright infringement.

This EULA is a legally binding agreement between you and ENCORE. You intend to be legally bound to this EULA to the same extent as if ENCORE and you physically signed this EULA. By installing, copying, or otherwise using the SOFTWARE, you agree to be bound by the terms and conditions contained in this EULA. If you do not agree to all of the terms and conditions contained in this EULA, you may not install or use the SOFTWARE. If, for whatever reason, installation has begun or has been completed, you should cancel installation or un-install the SOFTWARE, as the case may be.

II. YOUR LICENSE TO DEVELOP AND TO DISTRIBUTE.

As provided in more detail below, this EULA grants you two licenses: 1) a license to use the SOFTWARE to develop other software products (the "**Development License**"); and 2) a license to use and/or distribute the Developed Software (the "**Distribution License**"). Both of these licenses (individually and collectively, the "**Licenses**") are explained and defined in more detail below.

1. Definitions. The following terms have the respective meanings as used in this EULA:

"**Network Server**" means a computer with one or more computer central processing units (CPU's) that operates for the purpose of serving other computers logically or physically connected to it, including, but not limited to, other computers connected to it on an internal network, intranet or the Internet. "**Web Server**" means a type of Network Server that serves other computers more particularly connected to it over an intranet or the Internet.

"**Developed Software**" means those computer software products that are developed by or through the use of the SOFTWARE. "**Developed Web Server Software**" means those Developed Software products that reside logically or physically on at least one Web Server and

are operated (meaning the computer software instruction set is carried out) by the Web Server's central processing unit(s) (CPU).

"Developed Legacy Software" means those Developed Software products that are not Developed Web Server Software, including, for example, stand-alone applications and applications accessed by a file server only.

"Redistributable Files" means the SOFTWARE files or other portions of the SOFTWARE that are provided by ENCORE and are identified as such in the Documentation for distribution by you with the Developed Software.

"Developer" means a human being or any other automated device using the SOFTWARE in accordance with the terms and conditions of this EULA.

"Enterprise" means a company or any other legal entity using the SOFTWARE in accordance with the terms and conditions of this EULA.

"Source Code" means the computer programming code or any computer instructions necessary to compile the SOFTWARE.

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6. U.S. Government Restricted Rights. The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. The only rights provided in the software and documentation provided herein shall be those contained in this EULA. Under no circumstances shall ENCORE be obligated to comply with any Governmental requirements regarding the submission of or the request for exemption from submission of cost or pricing data or cost accounting requirements. For any distribution of the SOFTWARE that would require compliance by ENCORE with the Government's requirements relating to cost or pricing data or cost accounting requirements, you must obtain an appropriate waiver or exemption from such requirements for the benefit of ENCORE from the appropriate Government authority before the distribution and/or license of the SOFTWARE to the Government.

IV. WARRANTIES AND REMEDIES.

1. Limited Warranty. ENCORE warrants that the original media, if any, are free from defects for ninety (90) days from the date of delivery of the SOFTWARE. **EXCEPT AS OTHERWISE PROVIDED IN THE PRECEDING SENTENCE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ENCORE EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SOFTWARE, DOCUMENTATION AND ANYTHING ELSE PROVIDED BY ENCORE HEREBY AND ENCORE PROVIDES THE SAME IN "AS IS" CONDITION WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION REMAINS WITH YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS WHICH VARY FROM STATE TO STATE.**

2. Limited Remedy. ENCORE's entire liability and your exclusive remedy under this EULA shall be, at ENCORE's sole option, either (a) return of the price paid for the SOFTWARE; (b) repair the SOFTWARE through updates distributed online or otherwise in ENCORE's discretion. Any media for any repaired or replacement SOFTWARE will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. THESE REMEDIES ARE NOT AVAILABLE OUTSIDE OF THE UNITED STATES OF AMERICA. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ENCORE BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFIT, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF ENCORE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IN CERTAIN CASES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

V. MISCELLANEOUS.

1. This is the Entire Agreement. This EULA (including any addendum or amendment to this EULA included with the SOFTWARE) is the final, complete and exclusive statement of the entire agreement between you and ENCORE relating to the SOFTWARE. This EULA supersedes any prior and contemporaneous proposals, purchase orders, advertisements, and all other communications in relation to the subject matter of this EULA, whether oral or written. No terms or conditions, other than those contained in this EULA, and no other understanding or

agreement which in any way modifies these terms and conditions, shall be binding upon the parties unless entered into in writing executed between the parties, or by other non-oral manner of agreement whereby the parties objectively and definitively act in a manner to be bound (such as by continuing with an installation of the SOFTWARE, "clicking-through" a questionnaire, etc.) Employees, agents and other representatives of ENCORE are not permitted to orally modify this EULA.

2. You Indemnify ENCORE. You agree to indemnify, hold harmless, and defend ENCORE and its suppliers and resellers from and against any and all claims or lawsuits, including attorney's fees, which arise out of or result from your breach of any of the terms and conditions of this EULA.

3. Interpretation of this EULA. If for any reason a court of competent jurisdiction finds any provision of this EULA, or any portion thereof, to be unenforceable, that provision of this EULA will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this EULA will continue in full force and effect. Formatives of defined terms shall have the same meaning of the defined term. Failure by either party to enforce any provision of this EULA will not be deemed a waiver of future enforcement of that or any other provision. Except as otherwise required or superseded by law, this EULA is governed by the laws of the State of California, without regard to its conflict of laws principles. The parties consent to the personal jurisdiction and venue of the State of California, in the County of Marin, and agree that any legal proceedings arising out of this EULA shall be conducted solely in such State. If the SOFTWARE was acquired outside the United States, then local law may apply.