

END-USER LICENSE AGREEMENT FOR ENCORE SYSTEMS, LLC SOFTWARE

IMPORTANT—READ CAREFULLY: This End User License Agreement (this "EULA") contains the terms and conditions regarding your use of the SOFTWARE (as defined below). This EULA contains material limitations to your rights in that regard. You should read this EULA carefully and treat it as valuable property.

I. THIS EULA.

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 USE THE SOFTWARE.

As provided in more detail below, this EULA grants you a single license to use the SOFTWARE to create a single application or web site. This license (the "**License**") is 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.

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

"Single Use License" means that for each **Developed Software** product utilizing the SOFTWARE, you must purchase a separate End User License.

2. Your License. You are hereby granted a limited, royalty-free, non-exclusive right to use the SOFTWARE to design, develop, and test Developed Software, on the express condition that, and only for so long as, you fully comply with all terms and conditions of this EULA.

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The Single Use License means that you may install the SOFTWARE for use in designing, testing and creating a single Developed Software product. You may install or use the SOFTWARE on a computer that is a network server or a computer at which the SOFTWARE is used by more than one Developer, so long as the Developed Software is a single product for use in a single installation. You may not create more than one Developed Software product unless you purchase an additional Single Use License for each Developed Software product. Further, you may not install more than one copy of the Developed Software product unless you purchase an additional Single Use License for each installation.

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III. INTELLECTUAL PROPERTY.

1. Copyright. You agree that all right, title, and interest in and to the SOFTWARE (including, but not limited to, any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE), and any copies of the SOFTWARE, and any copyrights and other intellectual properties therein or related thereto are owned exclusively by ENCORE, except to the limited extent that ENCORE may be the rightful license holder of certain third-party technologies incorporated into the SOFTWARE. The SOFTWARE is protected by copyright laws and international treaty provisions. The SOFTWARE is licensed to you, not sold to you. ENCORE reserves all rights not otherwise expressly and specifically granted to you in this EULA.

2. Backups. You may either: (a) copy the SOFTWARE solely for backup or archival purposes; or (b) install the SOFTWARE on a single computer, provided you keep the original solely for backup or archival purposes. Notwithstanding the foregoing, you may not copy the Documentation.

3. General Limitations. You may not reverse engineer, decompile, or disassemble the SOFTWARE, except and only to the extent that applicable law expressly permits such activity notwithstanding this limitation.

4. Software Transfers. You may not rent or lease the SOFTWARE. You may transfer the SOFTWARE to another computer, provided that it is completely removed from the computer from which it was transferred. You may permanently transfer all of your rights under the EULA, provided that you retain no copies, that you transfer all the SOFTWARE (including all component parts, the media and printed materials, any dates, upgrades, and this EULA), and that the recipient agrees to the terms and conditions of this EULA as provided herein. If the SOFTWARE is an update or upgrade, any transfer must include all prior versions of the SOFTWARE.

5. Termination. Without prejudice to any other rights it may have, ENCORE may terminate this EULA and the Licenses if you fail to comply with the terms and conditions contained herein. In such an event, you must destroy all copies of the SOFTWARE and all of its component parts.

6. Export Restrictions. You acknowledge that the SOFTWARE is of U.S. origin. You acknowledge that the license and distribution of the SOFTWARE is subject to the export control laws and regulations of the United States of America, and any amendments thereof, which restrict exports and re-exports of software, technical data, and direct products of technical data, including services and Developed Software. You agree that you will not export or re-export the SOFTWARE or any Developed Software, or any information, documentation and/or printed materials related thereto, directly or indirectly, without first obtaining permission to do so as required from the United States of America Department of Commerce's Bureau of Export Administration ("**BXA**"), or other appropriate governmental agencies, to any countries, end-users, or for any end-uses that are restricted by U.S. export laws and regulations, and any amendments thereof. You represent and warrant that neither the BXA nor any other United States federal agency has suspended, revoked or denied your export privileges. ENCORE acknowledges that it shall use reasonable efforts to supply you with all reasonably necessary information regarding the SOFTWARE and its business to enable you to fully comply with the provisions of this Section. If you have any questions regarding your obligations under United States of America export regulations, you should contact the Bureau of Export Administration, United States Department of Commerce, Exporter Counseling Division, Washington DC. U.S.A. (202) 482-4811, <http://www.bxa.doc.gov>.

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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.