

END-USER LICENSE AGREEMENT FOR ENCORE SYSTEMS, LLC SOURCE CODE

IMPORTANT—READ CAREFULLY: This End User License Agreement (this "EULA") contains the terms and conditions regarding your use of the SOURCE CODE (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. Source Code Covered by this EULA. This EULA governs your use of the ENCORE SYSTEMS, LLC ("ENCORE") source code enclosed or otherwise accompanied herewith (individually and collectively, the "SOURCE CODE"). The term "SOURCE CODE" includes, to the extent provided by ENCORE: 1) any computer programming code or any computer instructions necessary to compile the included software products (see Software EULA); 2) any revisions, updates and/or upgrades thereto; 3) anything in any form whatsoever intended to be used with or in conjunction with the SOURCE CODE; 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 SOURCE CODE, 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 SOURCE CODE. If, for whatever reason, installation has begun or has been completed, you should cancel installation or un-install the SOURCE CODE, as the case may be. Except as provided in the License Agreement, you may not transfer, rent, lease, lend, modify, translate, sublicense, time-share or electronically transmit or receive the source code, media or documentation.

II. YOUR LICENSE TO DEVELOP AND TO DISTRIBUTE.

1. Usage and Redistribution

You may not, under any circumstances, redistribute the SOURCE CODE.

You may include the SOURCE CODE in compiled form (*.exe or *.dll files). You may modify the SOURCE CODE to adapt it to your needs; however you may only redistribute the compiled form of the modified SOURCE CODE. You are not allowed to redistribute any original or modified SOURCE CODE file. You are not allowed to copy and paste SOURCE CODE into external classes. All SOURCE CODE is copyrighted and may only be used within the original classes.

You may not resell, rent, lease or distribute the SOURCE CODE or compiled components alone; they must be distributed as a component of an application and bundled with an application or with the application's installation files. You may not resell, rent, lease or distribute the SOURCE CODE or components in any way that would directly compete with ENCORE. All source code provided by ENCORE must be compiled or password protected to the extent that only the licensed software developer(s) may obtain access to it.

2. Non-Compete

You shall not own, manage, operate, consult or be employed in a business substantially similar to, or competitive with the present business of ENCORE or such other business activity in which ENCORE may substantially engage during the term of this agreement.

3. Trade Secrets

You acknowledge and agree that the structure, sequence and organization of the source code contain valuable trade secrets of ENCORE. You agree to hold such trade secrets in confidence.

III. INTELLECTUAL PROPERTY.

1. Copyright. You agree that all right, title, and interest in and to the SOURCE CODE, and any copies of the SOURCE CODE, and any copyrights and other intellectual properties therein or related thereto are owned exclusively by ENCORE. The SOURCE CODE is protected by copyright laws and international treaty provisions. The SOURCE CODE is licensed to you, not sold to you. ENCORE reserves all rights not otherwise expressly and specifically granted to you in this EULA.

2. SOURCE CODE Transfers. You may not rent or lease the SOURCE CODE. You may permanently transfer all of your rights under the EULA, provided that you retain no copies, that you transfer all the SOURCE CODE (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 SOURCE CODE is an update or upgrade, any transfer must include all prior versions of the SOURCE CODE.

3. 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 SOURCE CODE and all of its component parts.

4. Export Restrictions. You acknowledge that the SOURCE CODE is of U.S. origin. You acknowledge that the license and distribution of the SOURCE CODE 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 SOURCE CODE 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 SOURCE CODE 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>.

5. U.S. Government Restricted Rights. The SOURCE CODE and documentation are provided with RESTRICTED RIGHTS. The only rights provided in the source code 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 software derived from the SOURCE CODE 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 SOURCE CODE. **EXCEPT AS OTHERWISE PROVIDED IN THE PRECEDING SENTENCE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ENCORE EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SOURCE CODE, 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 SOURCE CODE 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 SOURCE CODE; (b) repair the SOURCE CODE through updates distributed online or otherwise in ENCORE's discretion. Any media for any repaired or replacement SOURCE CODE 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 SOURCE CODE, 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 SOURCE CODE) is the final, complete and exclusive statement of the entire agreement between you and ENCORE relating to the SOURCE CODE. 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 SOURCE CODE, "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 SOURCE CODE was acquired outside the United States, then local law may apply.