

ENGHOUSE GLOBAL END USER LICENSE AGREEMENT (EULA)

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1. DEFINITIONS

“Affiliate” – means any entity that is, directly or indirectly, controlling, controlled by, or under common control with Enghouse Interactive, Inc. or is a subsidiary of Enghouse Systems Limited. For the purposes of this definition, “control” means the power to direct the management and policies of such party, directly or indirectly, whether through ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Enghouse Reseller” – A reseller, distributor, direct partner, service provider or other partner authorized by Enghouse to provide Software to end users in applicable territory.

“Software” - shall mean the collective reference to Enghouse’s proprietary software and any third party proprietary software which Enghouse or Enghouse Reseller may distribute to Customer on the basis of resell or other transfer. Such Software includes any product documentation and any upgrades, updates, new releases or other modification thereto made generally available by Enghouse in its discretion from time to time. Software shall not include custom development.

2. SCOPE

This Agreement is applicable to anyone, who installs, downloads, and/or uses Software, obtained from Enghouse or an Enghouse Reseller. Customer is not authorized to use the Software if the Software was obtained from anyone other than Enghouse or an Enghouse Reseller authorized to distribute the Software.

3. SOFTWARE LICENSE TERMS AND CONDITIONS

3.1 **Rights Granted to Customer:** The rights granted to Customer shall be subject to Customer’s compliance with the terms of this Agreement including, without limitation payment for the Software. If Customer has purchased the Software, Enghouse grants to Customer a non-exclusive, non-transferable license (on a perpetual or subscription basis depending on purchase) to install, use and execute the Software in object code form on a per-license basis at the location specified (“Software License”). The location of the Software use may be changed by Customer from time to time with written notice to Enghouse. Software License is limited to the site(s), number of seats, concurrent users, agents, servers, ports, devices, managed applications, and/or copies as applicable to the Software obtained, not to exceed the number of licenses set forth on applicable orders. The Software License shall become effective upon delivery of the Software and shall remain in force unless terminated due to expiration or breach of these license grant terms or confidentiality. This right does not include permission to grant sub-licenses or otherwise transfer such rights. Customer may make copies of the Software for archival purposes only, provided that it retains or affixes the equivalent of Enghouse’s proprietary legend and copyrights to the copy. Additionally, the Customer may make several copies of the system documentation, excluding training manuals and materials, provided that they are for internal use only. Customer may not reverse engineer, disassemble or otherwise translate the Software License provided pursuant to this Agreement. Enghouse, or any third party that owns the Software License, retains exclusive title to and all rights to the Software. The Customer acknowledges that the Software and documentation are the property of Enghouse and that the only right that the Customer obtains to the Software is the right of use in accordance with the terms of this Agreement.

3.2 **Governmental Use:** All Software Licenses and documentation furnished pursuant to this Agreement were developed at private expense and are provided with RESTRICTED RIGHTS. Any use, duplication or disclosure by or for any governmental agency of the United States Government or any other jurisdiction shall be subject to the restricted rights applicable to commercial computer software including under FAR Clauses 12.211, 12.212, 52.227-19 or DFARS 227.7202, 252.227-7013 as applicable or any successor provision or any other legal provisions respective of restricted rights for commercial software. Consistent with the above, all Software and third party software as well as commercial computer documentation are licensed to governmental end users only as

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- 3.3 **Software Title:** No title to or ownership of the Software or any of its parts, the information it contains or in any applicable rights therein, such as patents, copyrights and trade secrets, is transferred to Customer. Any reference to "sale", "purchase" or "subscription" of the Software shall be deemed to mean, "License on the terms contained in this Agreement." Enghouse considers the information contained in the Enghouse Software owned or created by Enghouse to be trade secrets of Enghouse and any third-party software licenses which Enghouse may resell to Customer to be trade secrets of such third-party licensor. Customer agrees to treat Software as Confidential Information and shall use the same degree of care used by Customer to protect its own Confidential Information. Except as set forth herein, or as may be permitted in writing by Enghouse, Customer will not provide, transmit or otherwise make available, the Software or any part or copy thereof to any third party, reverse engineer, reverse compile or reverse assemble the Software in whole or in part, or attempt to derive the source code, modify, adapt, translate, or create derivative works of the Software or any updates or any part thereof. Notwithstanding the previous sentence, Customer may configure Software to meet Customer's needs and user preferences.
- 3.4 **Restrictions:** Customer may not publish, display, disclose, sell, rent, lease, loan, or distribute the Software, or any part thereof. Customer may not assign, sublicense, convey or otherwise transfer, pledge as security or otherwise encumber the rights and licenses granted hereunder with respect to the Software. Customer may not market, co-brand, private label or otherwise permit third parties to link to the Software, or any part thereof. Customer may not use the Software, or any part thereof, in the operation of a service bureau or for the benefit of any other person or entity. Customer may not cause, assist or permit any third party to do any of the foregoing.
- 3.5 **Third Party Software:** Some third party software (including some imbedded software) are exclusively licensed pursuant to express end user license terms made available at <http://www.enghouse.com/legal/agreements.html> ("Third Party EULA"). To the extent applicable, Customer agrees to be bound by these end-user terms respective of the applicable Third Party EULA provisions. Third party software licenses provided to Customer which are not expressly provided for in the Third Party EULA provisions are provided to Customer pursuant to the terms of this agreement including without limitation this Section 3. All third party software are restricted for use solely in conjunction with the particular Software intended by Licensor to be used therewith or with which Enghouse provides the third party software, and may not be used with any other products, or on a stand-alone basis.

4. WARRANTIES

- 4.1 **Limited Warranty:** Enghouse warrants, for a period of thirty (30) days from date of delivery, that the Software will substantially conform to the published specifications prevailing at the time of purchase or delivery. Enghouse's sole obligation and liability hereunder will be to use reasonable efforts to remedy any such non-conformance which is reported to Enghouse in writing within the warranty period. The exclusive remedy for any breach of the foregoing warranties is for Enghouse to repair, modify, replace or re-perform (as applicable). Notwithstanding the foregoing, if longer warranty periods are mandated under applicable law those periods shall apply for that location only.
- 4.2 **Disclaimer of Warranty:** EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION 4, SOFTWARE IS PROVIDED BY ENGHOUSE AND ACCEPTED BY THE CUSTOMER "AS IS" AND ENGHOUSE GIVES TO THE CUSTOMER NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO SOFTWARE OR THE PERFORMANCE OR RESULTS OF USE THEREOF. WITHOUT LIMITING THE FOREGOING, ENGHOUSE DOES NOT WARRANT THAT THE SOFTWARE OR THE OPERATION THEREOF IS OR WILL BE ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET THE CUSTOMER'S REQUIREMENTS, AND ENGHOUSE GIVES NO IMPLIED WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WITH REGARD TO MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE AND WHETHER ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

ENGHOUSE DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS TO THE ADEQUACY OR SUFFICIENCY IN COMPLYING WITH THE TELEPHONE CONSUMER PROTECTION ACT ("TCPA"), ANY DECISIONS, DIRECTIONS OR GUIDANCE GIVEN BY OFCOM OR ANY COMMUNICATIONS REGULATORY AUTHORITY IN ANY OTHER APPLICABLE JURISDICTION. THE CUSTOMER ACKNOWLEDGES THAT IT IS CUSTOMER'S EXCLUSIVE LIABILITY TO COMPLY WITH ANY REGULATORY AUTHORITY AND ALL APPLICABLE COMMUNICATIONS LAWS INCLUDING OUTBOUND COMMUNICATIONS AND DO-NOT-CONTACT OBLIGATIONS. IF CUSTOMER PURCHASES OUTBOUND DIALLER SOFTWARE OR SERVICES, THE PARTIES ACKNOWLEDGE THAT CELL PHONE DATA CONSTANTLY CHANGES AND AS A RESULT MAY NOT BE ERROR FREE.

5. MAINTENANCE AND SUPPORT

Enghouse has no obligation under this Agreement to provide maintenance/support for the Software. Any maintenance/support purchased for the Software is subject to Enghouse's then-current maintenance/support policies.

6. LIMITATION OF LIABILITY

- 6.1 IN NO EVENT SHALL ENGHOUSE BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT OR BUSINESS OR FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHER LEGAL THEORY. ENGHOUSE AND THIRD'S PARTY SOFTWARE SUPPLIERS' LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE LESSER OF THE PURCHASE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS OR SERVICES UNDER THE SPECIFIC ORDER RELATING TO THE CLAIM IN THE PRIOR TWELVE (12) MONTH PERIOD OR ANY OTHER

LIMITATION PROVIDED IN ANY SPECIFIC THIRD PARTY EULA AVAILABLE AT [HTTP://WWW.ENGHOUSE.COM/LEGAL/AGREEMENTS.HTML](http://www.ENGHOUSE.COM/LEGAL/AGREEMENTS.HTML). ENGHOUSE SHALL HAVE NO LIABILITY FOR ANY CUSTOM APPLICATION PROGRAMS. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION HEREUNDER MAY BE BROUGHT BY EITHER PARTY MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, EXCEPT FOR AN ACTION FOR NON-PAYMENT.

7. CONFIDENTIAL INFORMATION

Each party acknowledges that, in the course of performing its duties under this Agreement, it may obtain information relating to the other party, which is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, this Agreement, pricing and proposals, computer software, trade secrets, know-how, inventions, techniques, processes, programs, schematics, data, customer lists, financial information and sales and marketing plans. Each party shall at all times maintain in the strictest confidence and trust all such Confidential Information, which shall not be less than those measures employed by each party in protecting its own Confidential Information of equivalent value. Customer and its employees agree not to disclose such information to any third party.

The commitments set forth above shall not apply to any Confidential Information which:

- A. is now generally known or available or which hereafter through no act or failure on the part of the receiving party becomes generally known or available;
- B. is legally known to the receiving party at the time of receiving such information;
- C. is hereafter furnished to the receiving party by a third party without restriction on disclosure, where such third party legally obtained such information and the right to disclose it to the receiving party; or
- D. is independently developed by the receiving party without violation of any legal rights which the disclosing party may have in such information.

Both parties agree that all Confidential Information disclosed hereunder shall remain the property of the disclosing party and may only be copied or reproduced as expressly permitted herein. Upon expiration or termination of this Agreement, the receiving party shall return all Confidential Information to the disclosing party along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. All Confidential Information disclosed hereunder is provided by the disclosing party without representation or warranty of any kind.

Where the parties have entered into a separate, confidential non-disclosure agreement ("NDA") and the terms of the NDA are inconsistent with the terms contained herein, the terms of the NDA shall take precedence.

8. JURISDICTION

- A. If the Software is going to be used in the United States, South and Central America, or the Caribbean, the Agreement is controlled by and construed under the laws of the State of Arizona, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of Arizona shall have exclusive jurisdiction over any claim arising under the Agreement.
- B. If the Software is going to be used in Canada, unless expressly prohibited by local law, the Agreement are controlled by and construed under the laws of the Province of Ontario, Canada, notwithstanding any conflicts of law provisions; and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under the Agreement.
- C. If the Software is going to be used in Europe, the Middle East, Africa, Asia or Oceania (excluding Australia and New Zealand), unless expressly prohibited by local law, the Agreement is controlled by and construed under the laws of England and Wales, notwithstanding any conflicts of law provisions; and the English courts shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. In addition, if the Agreement is controlled by the laws of England and Wales, no person who is not a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- D. If the Software is to be used in Australia, unless expressly prohibited by local law, the Agreement is controlled by and construed under the laws of the State of New South Wales, Australia, notwithstanding any conflicts of law provisions; and the State and federal courts of New South Wales shall have exclusive jurisdiction over any claim arising under the Agreement.
- E. If the Software is to be used in New Zealand, unless expressly prohibited by local law, the Agreement is controlled by and construed under the laws of New Zealand, notwithstanding any conflicts of law provisions; and the courts of New Zealand shall have exclusive jurisdiction over any claim arising under the Agreement.
- F. If the Software is to be used in any other country, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the State of Arizona, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of Arizona shall have exclusive jurisdiction over any claim arising under the Agreement.

9. GENERAL

- 9.1 **Assignment:** The interests of Customer in this Agreement are personal and shall not be assigned, transferred, shared or divided in any manner by Customer without the prior written consent of Enghouse. Enghouse shall be entitled to assign this Agreement and the rights granted hereunder to any affiliate, subsidiary or successor in interest to Enghouse's business.

- 9.2 Injunctive Relief: Customer acknowledges that remedies at law may be inadequate to provide Enghouse with full compensation in the event of Customer's material breach of any: (i) license grant hereunder, (ii) confidentiality and nondisclosure obligations herein, or (iii) intellectual property rights of Enghouse, and that Enghouse shall therefore be entitled, without bond or other security obligation, to seek injunctive relief in the event of any such material breach.
- 9.3 Verification: At the request of Enghouse, Customer shall furnish Enghouse with a signed statement that the Software is being used pursuant to the terms and conditions of this Agreement. If Enghouse has reason to believe that the Software is not being used in accordance with the terms and conditions of this Agreement, Customer shall permit Enghouse to review your relevant records and inspect your facilities to verify compliance with this Agreement. Enghouse will conduct such inspection during normal business hours in a manner that does not unreasonably interfere with your business operations. In the event such inspection results in fees due to Enghouse, Customer shall immediately pay those fees to Enghouse, and any reasonable inspection costs.
- 9.4 Exports: This Agreement is expressly made subject to applicable laws, regulations, orders or other restrictions on the export of the Software or information about such Software which may be imposed from time to time. Customer shall not export the Software, documentation or information about the Software and documentation without complying with such laws, regulations orders or other restrictions. Customer agrees to indemnify Supplier and its licensors against all claims, losses, damages, liabilities, costs and expenses, including reasonable legal fees, to the extent such claims arise out of any breach of this section.
- 9.5 Severability: If any provision of this Agreement is determined to be void or unenforceable, in whole or in part, it shall be severable from all other provisions hereof and shall not be deemed to affect or impair the validity of any other provisions, and each such provision is deemed to be separate and distinct.
- 9.6 Termination: This Agreement is effective until it is terminated. Customer may terminate this Agreement at any time by destroying or returning all copies of the Software and documentation in your possession or under your control. Upon termination, Customer agrees to destroy or return all copies of the Software and documentation and to certify in writing that all known copies, including archived copies, have been destroyed. All provisions relating to confidentiality, proprietary rights and limitation of liability shall survive the termination of this Agreement.
- 9.7 Full Agreement: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to Enghouse licensing the Software to Customer and contains all the covenants and agreements between the parties with respect to the licensing of such Software. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.