

[Last Updated: March 13, 2018]

TERMS OF SERVICE

ENCORED, Inc., a Delaware corporation (“ENCORED, Inc.”) provides: (1) an EnerTalk user account website that may be accessed at encoredtech.com, enertalk.us, enertalk.com (each a “Site”), (2) services accessible through the Sites (“Web Apps”), (3) software that may be downloaded to your smartphone or tablet to access services (“Mobile Apps”), and (4) Green Button and other services that can be accessed using the Web Apps and Mobile Apps (“Green Button Services”). Some ENCORED, Inc. services and products are used together or integrated with other third party products and services. Some ENCORED, Inc. products and services are for use in conjunction with EnerTalk hardware products (“Products”). The term “Services” means the Sites, Web Apps, Mobile Apps, Green Button Services and other services provided by ENCORED, Inc.

These Terms of Service (“Terms”) govern your access to and use of the Services. The term “you,” as used in these Terms, means any person or entity who accesses or uses the Services and any person or entity who creates an Account (as defined in Section 2(a)) and accepts these Terms, including Owners and Authorized Users (as defined in Section 2(b)), as applicable. These Terms give you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under these Terms will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

THIS IS A LEGAL AGREEMENT. BY ACKNOWLEDGING THE AGREEMENT OR BY ACCESSING AND USING THE SERVICES (INCLUDING THE SITES), YOU ARE ACCEPTING AND AGREEING TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT IN CONNECTION WITH THE ACCESS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO USE OR ACCESS THE SERVICES AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS, YOU SHOULD DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT (AS DESCRIBED BELOW) AND CEASE ACCESSING OR USING THE SERVICES.

AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE SERVICES AND OF THE PRODUCTS CONNECTED TO THE SERVICES. IF YOU DO NOT AGREE, YOU SHOULD NOT USE THE SERVICES.

1. Overview, Eligibility, Customer Service, Term and Termination

(a) Overview and Relation to Other Agreements. Your purchase of any Product is governed by the limited warranty provided with that Product (“Limited Warranty”) and further governed by the terms and conditions of sale, attached hereto as Appendix A (“Sales Terms”). The software embedded in the Product (and any updates thereto) (“Product Software”) is licensed and governed by the End User Licensing Agreement (“EULA”). Limited Warranty, Sales Terms, EULA and the ENCORED, Inc. Privacy Policy (“Privacy Policy”) are incorporated by reference into these Terms and you are agreeing to accept and abide by them by using the Services.

(b) Eligibility. (i) You may use the Services only if you can form a binding contract with ENCORED, Inc. and only if you are in compliance with these Terms and all applicable local, state/provincial, national, and international laws, rules, and regulations. Only individuals age 18

and older are permitted to act as Owners and Authorized Users of EnerTalk Accounts. If you are an Owner or Authorized User, you represent and warrant that you are over the age of 18. Any use or access to the Services by individuals under the age of 18 is strictly prohibited and is a violation of these Terms. The Services are not available to any users previously prohibited from using the Services by ENCORED, Inc.

(c) Customer Service. If you have any questions or concerns regarding the Services, or these Terms, please contact ENCORED, Inc.

(d) Term and Termination. These Terms will remain in full force and effect so long as you continue to access or use the Services, or until terminated in accordance with the provisions of these Terms. At any time, ENCORED, Inc. may (i) suspend or terminate your rights to access or use the Services, or (ii) terminate these Terms with respect to you if ENCORED, Inc. in good faith believes that you have used the Services in violation of these Terms, including any incorporated guidelines, terms or rules. If you transfer a Product to a new owner, your right to use the Services with respect to that Products automatically terminates, and the new owner will have no right to use the Products or Services under your Account (as described below) and will need to register for a separate Account with ENCORED, Inc.

(e) Effect of Termination. Upon termination of these Terms, your Account and your right to use the Services will automatically terminate.

2. Accounts

(a) Your Account. To use the Services, you must register for a user account (“Account”) and provide certain information about yourself as prompted by the applicable registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Services does not violate any U.S. or other applicable law or regulation (e.g., you are not located in an embargoed country or are not listed as a prohibited or restricted party under applicable export control laws and regulations). You are entirely responsible for maintaining the confidentiality of your Account login information and for all activities that occur under your Account. You agree to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Account, and to maintain your password securely to prevent others from gaining access without your permission. You agree to immediately notify ENCORED, Inc. of any unauthorized use, or suspected unauthorized use, of your Account or any other breach of security. ENCORED, Inc. is not liable for any loss or damage arising from your failure to comply with the above requirements.

(b) The individual who creates an Account is the “Owner” of that Account and is the Owner of the Products associated with that Account. Individuals who are authorized by the Owner to access an Owner’s Products and Services are “Authorized Users.” Authorized Users may have the ability to use the Services and monitor and control the Products. Authorized Users may also have the ability to view information (including personal information) and content across all of an Owner’s Products, Services and Accounts. Authorized Users are responsible for their own actions in connection with the Products and Services, but Owner also hereby agrees to be fully responsible for all actions taken by Authorized Users relating to the Owner’s Products, Services and Account. If you are an Owner who invites or enables an Authorized User, you acknowledge and agree that such Authorized User may subsequently invite or enable other Authorized Users with the same access and ability to use your Products and Services set out above. As a result, if you are an Owner, you should authorize only those individuals that you trust to access your Account, Products, and Services.

3. Services

(a) Access and Use. Subject to these Terms, ENCORED, Inc. grants you a limited, non-transferable, non-exclusive, right (without the right to sublicense) to access and use the Services by (i) using the Web Apps in connection with, and solely for the purpose of, accessing a service explicitly provided by ENCORED, Inc. for your use (the “Permitted Purpose”), and (ii) installing and using the Mobile Apps solely on your own handheld mobile device (e.g., iPhone, iPad, or Android smartphone) and solely for the Permitted Purpose.

(b) Automatic Software Updates. ENCORED, Inc. may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Services and/or the Product Software (“Updates”). These may be automatically installed without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, your remedy is to terminate your Account and stop using the Services and the Products. If you do not terminate a previously created Account, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Services and the Products and you agree to promptly install any Updates ENCORED, Inc. provides. Your continued use of the Services and the Products is your agreement – (i) to these Terms with respect to the Services, and (ii) to the End User License Agreement with respect to updated Product Software.

(c) Third-Party Products and Services. Certain Services, including but not limited to Green Button Services, contain links and interactive functionality with one or more third-party products and services (“Third Party Products and Services”). By using such Third Party Products and Services, you consent and authorize the interface with such Third-Party Products and Service. You agree that ENCORED, Inc. may exchange information and control data regarding you and your products, including your personal information, in order to enable the interface you have authorized. Once this information is shared with the provider of the particular Third-Party Products and Service, its use will be governed by the third party's privacy policy and not by ENCORED, Inc.'s Privacy Policy. You acknowledge and agree that ENCORED, Inc. makes no representation or warranty about any Third-Party Products or Services. ENCORED, Inc. is not responsible for and has no liability for the functionality, actions, inactions, privacy settings, privacy policies, terms, products, services or content of any Third-Party Products or Services. ENCORED, Inc. strongly recommends that you review and understand the terms and conditions, privacy policies, settings, and information-sharing functions of such Third-Party Products or Services.

ENCORED, Inc. is not responsible for your use of any Third Party Products or Service or any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to your use of any Third Party Products or Services. Any interactions, correspondence, transactions, and other dealings that you have with the provider of Third-Party Products or Services are solely between you and the third party (including issues related to the content of third party advertisements, payments, delivery of goods, warranties (including product warranties), privacy and data security, etc.). You should contact the third party with any questions about their Third Party Products and Services.

(d) Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (i) you agree not to license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Services; (ii) you agree not to modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services; (iii) you agree not to access the Services in order to build a similar or competitive service; (iv) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means; (v) you agree not to upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer or communication network, computer, handheld mobile device, data, the

Services, the Products, the Product Software, or any other system, device or property; (vi) you agree not to interfere with, disrupt, or attempt to gain unauthorized access to, the servers or networks connected to the Services or violate the regulations, policies, or procedures of such networks; (vii) you agree not to access (or attempt to access) any of the Services by means other than through the interface that is provided by ENCORED, Inc.; (viii) you agree not to remove, obscure or alter any proprietary rights notices (including copyrights and trademark notices) which may be contained in or displayed in connection with the Services; (ix) you agree not to engage in conduct that is harassing, threatening, intimidating, or stalking, or that ENCORED, Inc. otherwise deem objectionable; (x) you agree not to use the Services in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying the Services or that could damage, disable, overburden or impair the functioning of the Services in any manner; (xi) you agree not to violate, infringe or misappropriate any intellectual property right, or other third-party right, or commit a tort; (xii) you agree not to attempt to bypass or circumvent measures employed to prevent or limit access to any content, area or functionality on the Services; (xiii) you agree not to develop any third-party applications that interact with the Services without our prior written consent; (xiv) you agree not to use any robot, spider, crawler, scraper, script, browser extension, offline reader or other automated means or interface not authorized by ENCORED, Inc. to access the Services, extract data or otherwise interfere with or modify the rendering of Services pages or functionality; (xv) you agree not to bypass or ignore instructions contained in our robots.txt file that controls automated access to the Services; and (xvi) you agree not to use the Services to engage in or promote any other activity that violates these Terms. Any future release, update, or other addition to functionality of the Services shall be subject to these Terms.

(e) Open Source. Certain items of independent, third party code may be included in the Web Apps and/or Mobile Apps that are subject to the GNU General Public License (“GPL”) or other open source licenses (“Open Source Software”). The Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. Nothing in these Terms limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software. In particular, nothing in these Terms restricts your right to copy, modify, and distribute such Open Source Software that is subject to the terms of the GPL.

(f) Privacy. Please review the [Privacy Policy](#). The [Privacy Policy](#) describes practices regarding the information that ENCORED, Inc. may collect from users of the Products and Services.

(g) Security. ENCORED, Inc. cares about the integrity and security of your personal information. However, ENCORED, Inc. cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

(h) Modification and Discontinuation. ENCORED, Inc. reserves the right, at any time, with or without notice, to (i) modify, suspend, or discontinue the Services or any part thereof; or (ii) offer opportunities to some or all Service users which are different from the opportunities offered to other Service users. You agree that ENCORED, Inc. will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services or any part thereof.

(i) Access Outside the United States. ENCORED, Inc. does not represent or warrant that the Products or Services or any part thereof is appropriate or available for use in any particular jurisdiction other than the United States. In choosing to access the Services, you do so on your own initiative and at your own risk, and you are responsible for complying with all local laws, rules and regulations. ENCORED, Inc. may limit the availability of Products or Services, in whole or in part, to any person, geographic area or jurisdiction ENCORED, Inc. chooses, at any

time and in our sole discretion. You will be bound by these Terms wherever you access or use the Sites or use the Services.

4. Agreed Usage and Limitations Of Services

(a) Intended Use of Services. The Service is intended to be accessed and used for non-time-critical information relating to the Products. While ENCORED, Inc. aims for the Service to be highly reliable and available, it is not intended to be reliable or available 100% of the time. The Service is subject to sporadic interruptions and failures for a variety of reasons beyond ENCORED, Inc.'s control, including Internet connectivity, Wi-Fi intermittency and availability, service provider uptime, mobile notifications and carriers, among others. You acknowledge these limitations and agree that ENCORED, Inc. is not responsible for any damages allegedly caused by the failure or delay of the Service to reflect current status or notifications.

(b) Temporary Suspension. The Services may be suspended temporarily without notice for security reasons, system failure, maintenance and repair, or other circumstances. You agree that you will not be entitled to any refund or rebate for such suspensions. ENCORED, Inc. does not offer any specific uptime guarantee for the Services.

(c) System Requirements. The Services will not be accessible without: (i) internet access; (ii) an Account; and (iii) other system elements that may be specified by ENCORED, Inc. from time to time. It is your responsibility to ensure that you have all required system elements and that they are compatible and properly configured. You acknowledge that the Services may not work as described when the requirements and compatibility have not been met.

(d) Energy Savings and other Benefits. ENCORED, Inc. does not guarantee or promise any specific level of energy savings or other monetary benefit from the use of the Products or Services or any feature of them. Actual energy savings and monetary benefits vary with factors beyond ENCORED, Inc.'s control or knowledge. From time to time, ENCORED, Inc. may use the Services to provide you with information that is unique to you and your energy usage and suggests an opportunity to save money on energy bills if you adopt suggestions or features of the Products or Services. ENCORED, Inc. does this to highlight an opportunity based on our analysis and information about you and your household. You acknowledge that these promotions are not a guarantee of actual savings, and you agree not to seek monetary or other remedies from ENCORED, Inc. if your savings differ.

(g) The Services provide you information ("Product Information") regarding the Products in your home and their connection with other products and services. All Product Information is provided "as is" and "as available". ENCORED, Inc. cannot guarantee that it is correct or up to date. In cases where it is critical, accessing Product Information through the Services is not a substitute for direct access of the information in the home.

5. Limitations Of Services Due to Third Parties.

(a) General. Services rely on or interoperate with Third Party Products and Services. These Third Party Products and Services are beyond ENCORED, Inc.'s control, but their operation may impact or be impacted by the use and reliability of the Services. You acknowledge and agree that: (i) the use and availability of the Services is dependent on the vendors and service providers of Third Party Products and Services, (ii) these Third Party Products and Services may not operate in a reliable manner 100% of the time, and they may impact the way that the Services operate, and (iii) ENCORED, Inc. is not responsible for damages and losses due to the operation of these Third Party Products and Services. You acknowledge that Third Party Products and Services that you connect to your account or interface with are not ENCORED, Inc. products and services and you acknowledge and agree that ENCORED, Inc. does not control, and that these Terms do not apply to, any Third Party Products and Services. Use of any Third Party Products and Services is

governed by separate terms and conditions provided by the operator(s) of the applicable Third Party Products and Services. You acknowledge and agree that ENCORED, Inc. makes no representation or warranty about the operation, reliability, or safety of any Third Party Products or Services. Accordingly, ENCORED, Inc. is not responsible for your use of any Third Party Products or Service or any personal injury, death, property damage (including, without limitation, to your home), interruption of service, downtime, data loss, or other harm or losses arising from or relating to your use of any Third Party Products or Services. You should contact the Third Party with any questions about their Products and Services.

(b) Equipment, ISP, and Carrier. You acknowledge that the availability of the Services is dependent on (i) your computer, mobile device, home wiring, home Wi-Fi network, and other related equipment (“Equipment”), (ii) your Internet service provider (“ISP”), and (iii) your mobile device carrier (“Carrier”). You acknowledge that you are responsible for all fees charged by your ISP and Carrier in connection with your use of the Services. You also acknowledge that you are responsible for compliance with all applicable agreements, terms of use/service, and other policies of your ISP and Carrier.

(c) App Stores. You acknowledge and agree that the availability of the Mobile Apps is dependent on the third party websites from which you download the Mobile Apps, e.g., the App Store from Apple or the Android app market from Google (each an “App Store”). You acknowledge that these Terms are between you and ENCORED, Inc. and not with an App Store. Each App Store may have its own terms and conditions to which you must agree before downloading Mobile Apps from it. You agree to comply with, and your license to use the Mobile Apps is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms, the more restrictive or conflicting terms and conditions in these Terms apply.

(d) Third Party Content. ENCORED, Inc. may display third-party content, advertisements, links, promotions, logos and other materials on or through the Services (collectively, “Third-Party Content”). ENCORED, Inc. does not control, endorse, sponsor or adopt any Third-Party Content or any third parties referenced on the Services, and ENCORED, Inc. makes no representations or warranties of any kind regarding such Third-Party Content, including, without limitation, regarding its accuracy or completeness. Your interactions with Third-Party Content, and any third party that provides Third-Party Content, are solely between you and such third parties, and ENCORED, Inc. is not responsible or liable in any manner for such interactions or Third-Party Content. When you leave the Services and enter a third-party site or service, these Terms no longer apply.

(e) Authorized Users. ENCORED, Inc. is not responsible for any Authorized User’s behavior, or for any personal injury, death, property damage (including, without limitation, to your home), or other harm or losses arising from or relating to their use of the Services.

(f) Release Regarding Third Parties. ENCORED, Inc. is not responsible for third parties or their products and services, including, without limitation, the App Stores, Third Party Products and Services, Third Party Content, Equipment, ISPs, and Carriers. ENCORED, Inc. hereby disclaims and you hereby discharge, waive and release ENCORED, Inc. and its licensors and suppliers from any past, present, and future claims, liabilities, and damages, known or unknown, arising out of or relating to your interactions with such third parties and their products and services. YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” YOU HEREBY WAIVE ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION.

6. Ownership and Intellectual Property

(a) ENCORED, Inc. Property. You acknowledge that all intellectual property rights, including without limitation copyrights, patents, trademarks, and trade secrets, in the Products, Product Software, and Services (i.e., the Sites, Web Apps, Mobile Apps and Green Button Services) are owned by ENCORED, Inc. or its affiliates or our licensors. Your possession, access, and use of the Products, Product Software, and Services do not transfer to you or any third party any rights, title, or interest in or to such intellectual property rights. ENCORED, Inc. and its affiliates and licensors and suppliers reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms.

You may only copy parts of the Services on to your own computer for your own personal use. You may not use the content of the Services in any other public or commercial way nor may you copy or incorporate any of the content of the Services into any other work, including your own web site without the written consent of ENCORED, Inc.. You must have a license from ENCORED, Inc. before you can post or redistribute any portion of the Services. ENCORED, Inc. retains full and complete title to all content on the Services, including any downloadable software and all data that accompanies it. You must not copy, modify or in any way reproduce or damage the structure or presentation of the Services or any content therein.

(b) Feedback. You may choose to, or ENCORED, Inc. may invite you to submit comments, suggestions, or ideas about the Products or Services, including how to improve the Products or Services (“Feedback”). By submitting any Feedback, you agree that your submissions are voluntary, gratuitous, unsolicited, and without restriction and will not place ENCORED, Inc. under any fiduciary or other obligation. ENCORED, Inc. may use, copy, modify, publish, or redistribute the submission and its contents for any purpose and in any way without any compensation to you. You also agree that ENCORED, Inc. does not waive any rights to use similar or related ideas previously known to ENCORED, Inc., developed by its employees, or obtained from other sources.

7. Indemnity and Release

You agree to defend, indemnify and hold ENCORED, Inc. and each of its respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, parent companies, subsidiaries, affiliates, agents, representatives, predecessors, successors and assigns (“Indemnified Parties”) harmless from any damages, liabilities, claims or demands (including costs and attorneys’ fees) made by any third party due to or arising out of (i) your use and each Authorized User’s use of the Products or Services, (ii) your or your Authorized Users’ violation of these Terms, (iii) any Feedback you provide; or (iv) your or your Authorized Users’ violation of any law or the rights of any third party. ENCORED, Inc. reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify ENCORED, Inc. and you agree to cooperate with our defense of such claims. You agree not to settle any such claim without ENCORED, Inc.’s prior written consent. ENCORED, Inc. will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

To the fullest extent permitted by applicable law, you release ENCORED, Inc. and the other Indemnified Parties from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between users and the acts or omissions

of third parties. You expressly waive any rights you may have under California Civil Code § 1542 as well as any other statute or common law principles that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

8. Warranty Disclaimers

(a) THE WARRANTY FOR THE PRODUCTS AND PRODUCT SOFTWARE ARE SET FORTH IN THE LIMITED WARRANTY AND THE EULA, RESPECTIVELY.

(b) THE SERVICES ARE PROVIDED FOR YOUR CONVENIENCE, "AS IS" AND "AS AVAILABLE" AND ENCORED, INC. AND OUR LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT.

(c) ENCORED, INC. AND OUR LICENSORS AND SUPPLIERS MAKE NO WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE SERVICES: (I) WILL MEET YOUR REQUIREMENTS; (II) WILL BE COMPATIBLE WITH YOUR HOME NETWORK, COMPUTER OR MOBILE DEVICE; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ENCORED, INC. OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY.

WHEN YOU INSTALL, SETUP OR USE SERVICES YOU MAY BE GIVEN THE OPPORTUNITY TO ALTER DEFAULTS OR CHOOSE PARTICULAR SETTINGS. THE CHOICES YOU MAKE CAN CAUSE DAMAGE OR LEAD TO NON-RECOMMENDED OPERATION OF YOUR CONNECTED EQUIPMENT OR SYSTEMS. YOU ASSUME ALL LIABILITY FOR SUCH DAMAGE WHEN YOU CHOOSE PARTICULAR SETTINGS OR SET OR ADJUST DEFAULTS.

(d) ENCORED, INC. DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCTS OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE PRODUCTS OR SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, AND ENCORED, INC. WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF SUCH PRODUCTS OR SERVICES.

9. Limitation of Liability

Nothing in these Terms and in particular within this "Limitation of Liability" clause shall attempt to exclude liability that cannot be excluded under applicable law.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN ADDITION TO THE ABOVE WARRANTY DISCLAIMERS, IN NO EVENT WILL (A) ENCORED, INC. BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THE SERVICES OR THE PRODUCTS, EVEN IF ENCORED, INC. KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (B) ENCORED, INC.'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE SERVICES AND THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU TO ENCORED, INC. FOR THE SERVICES OR THE PRODUCTS AT ISSUE IN THE PRIOR

12 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. ENCORED, INC. DISCLAIMS ALL LIABILITY OF ANY KIND OF ENCORED, INC.'S LICENSORS AND SUPPLIERS.

10. Arbitration

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH ENCORED, INC. AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM ENCORED, INC..

(a) Binding Arbitration. Except as specified in Section 10(b), for any disputes, claims, suits, actions, causes of action, demands or proceedings between you and ENCORED, Inc. arising out of or relating to the Services or these Terms (collectively, "Disputes"), you and ENCORED, Inc. agree to (a) waive your and ENCORED, Inc.'s respective rights to have any and all Disputes arising from or related to these Terms or the Services resolved in a court, and (b) waive your and ENCORED, Inc.'s respective rights to a jury trial. Instead, you and ENCORED, Inc. will arbitrate Disputes through binding arbitration (which is the referral of a Dispute to one or more persons charged with reviewing the Dispute and making a final and binding determination to resolve it instead of having the Dispute decided by a judge or jury in court).

(b) Exclusions. Section 10(a) will not apply to any Dispute in which either party (i) seeks to bring an individual action in small claims court, (ii) seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, or (iii) seeks temporary injunctive or equitable relief until an arbitrator can be empaneled and determine whether to continue, terminate or modify such relief. Any claim pursuant to clauses (ii) or (iii) of this provision or to appeal or seek enforcement of any arbitration award issued pursuant to Section 10(a) must be brought exclusively in the state or federal courts located in Santa Clara County, California. You may also litigate a Dispute in the small claims court located in the county where you reside if the Dispute meets the requirements to be heard in small claims court.

(c) NO CLASS ARBITRATIONS, CLASS ACTIONS OR REPRESENTATIVE ACTIONS. ANY DISPUTE IS PERSONAL TO YOU AND ENCORED, INC. AND WILL BE RESOLVED SOLELY THROUGH INDIVIDUAL ARBITRATION AND WILL NOT BE BROUGHT AS A CLASS ARBITRATION, CLASS ACTION OR ANY OTHER TYPE OF REPRESENTATIVE PROCEEDING. THERE WILL BE NO CLASS ARBITRATION OR ARBITRATION IN WHICH AN INDIVIDUAL ATTEMPTS TO RESOLVE A DISPUTE AS A REPRESENTATIVE OF ANOTHER INDIVIDUAL OR GROUP OF INDIVIDUALS. FURTHER, A DISPUTE CANNOT BE BROUGHT AS A CLASS OR OTHER TYPE OF REPRESENTATIVE ACTION, WHETHER WITHIN OR OUTSIDE OF ARBITRATION, OR ON BEHALF OF ANY OTHER INDIVIDUAL OR GROUP OF INDIVIDUALS.

(d) Federal Arbitration Act. These Terms affect interstate commerce and that the enforceability of this Section 10 will be both substantively and procedurally governed by and construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"), to the maximum extent permitted by applicable law.

(e) Notice; Informal Dispute Resolution. Each party will notify the other party in writing of any arbitrable or small claims Dispute within thirty (30) days of the date it arises, so that the parties can attempt in good faith to resolve the Dispute informally. Notice to ENCORED, Inc. will be sent by e-mail to ENCORED, Inc. at support@encoredtech.com. Notice to you will be by email to the then-current email address in your account. Your notice must include (a) your name, postal address, email address and telephone number, (b) a description in reasonable detail of the nature

or basis of the Dispute, and (c) the specific relief that you are seeking. If you and ENCORED, Inc. cannot agree how to resolve the Dispute within thirty (30) days after the date notice is received by the applicable party, then either you or ENCORED, Inc. may, as appropriate and in accordance with this Section 10, commence an arbitration proceeding or, to the extent specifically provided for in Section 10(b), file a claim in court.

(f) Process. Any arbitration will occur in Santa Clara County, California. Arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Services (“JAMS”), which are hereby incorporated by reference.

(g) Authority of Arbitrator. As limited by the FAA, these Terms and the applicable JAMS rules, the arbitrator will have (a) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute, including the determination of whether a Dispute is arbitrable, and (b) the authority to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual’s claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

(h) Rules of JAMS. The rules of JAMS and additional information about JAMS are available on the JAMS website. By agreeing to be bound by these Terms, you either (a) acknowledge and agree that you have read and understand the rules of JAMS, or (b) waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

11. Governing Law

THESE TERMS AND YOUR ACCESS TO AND USE OF THE SERVICES WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICT OR CHOICE OF LAW RULES OR PRINCIPLES (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

12. General

(a) Changes to these Terms. ENCORED, Inc. reserves the right to change the terms of these Terms from time to time in our sole discretion. If ENCORED, Inc. makes changes to these Terms, ENCORED, Inc. will provide notice of such changes, such as by posting the revised Terms to the Sites and mobile apps and updating the “Last Updated” date at the top of these Terms. Your continued use of the Services will confirm your acceptance of the revised Terms. If you do not agree to the modified Terms, you must stop using the Services.

(b) Termination or Suspension. Notwithstanding anything contained in these Terms, ENCORED, Inc. reserves the right, without notice and in the sole discretion of ENCORED, Inc., to terminate these Terms or suspend your right to access the Services. You may terminate these Terms upon notice to ENCORED, Inc. at support@encoredtech.com. Upon termination, you must immediately pay all fees payable to ENCORED, Inc. under these Terms.

(c) Protection of Confidentiality and Intellectual Property Rights. Notwithstanding anything to the contrary herein, ENCORED, Inc. may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

(d) Entire Agreement/Severability. These Terms constitute the entire agreement between you and ENCORED, Inc. regarding the use of the Services. Any failure by ENCORED, Inc. to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Neither party is an agent or partner of the other party.

(e) Survivability. The obligations in Sections 4, 6, 7, 8, 9, 10, 11 and 12 will survive any expiration or termination of these Terms.

(f) Assignment. These Terms, and any associated rights or obligations, may not be assigned or otherwise transferred by you without ENCORED, Inc.'s prior written consent. These Terms may be assigned by ENCORED, Inc. without restriction. These Terms are binding upon any permitted assignee.

(g) CONSENT TO RECEIVE ELECTRONIC COMMUNICATIONS. YOU CONSENT TO RECEIVE ALL NOTICES, DISCLOSURES AND OTHER COMMUNICATIONS (“COMMUNICATIONS”) FROM ENCORED, INC. ELECTRONICALLY RATHER THAN IN PAPER FORM, INCLUDING ANY COMMUNICATIONS ABOUT THE SERVICES AND YOUR ACCOUNT. YOU CONFIRM YOU CAN ACCESS AND RECEIVE COMMUNICATIONS ELECTRONICALLY. UNLESS OTHERWISE SPECIFIED IN THESE TERMS, ENCORED, INC. WILL PROVIDE COMMUNICATIONS TO YOU BY EMAILING THEM TO YOU AT THE EMAIL ADDRESS ASSOCIATED WITH YOUR PROFILE. YOU MAY UPDATE YOUR EMAIL ADDRESS BY LOGGING INTO YOUR PROFILE. A COMMUNICATION WILL BE CONSIDERED TO BE RECEIVED BY YOU UPON OUR DELIVERY.

(h) Disclosures. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

(i) Copyright/Trademark Information. All trademarks, logos, and service marks (“Marks”) displayed on the Services are the property of ENCORED, Inc. or of their respective holders. You are not permitted to use any of the Marks without the applicable prior written consent of ENCORED, Inc. or such respective holders. ENCORED, Inc. reserves the right to alter product and services offerings, specifications, and pricing at any time without notice, and is not responsible for typographical or graphical errors that may appear in this or in related documents.