

The Encompass Title Center and Directory Agreement

This Encompass® Title Center and Directory Agreement ("Agreement") is between Ellie Mae, Inc., having its principal place of business at 4155 Hopyard Road, Suite 200, Pleasanton, CA 94588 (referred to herein as "Ellie Mae" or "we" or "our"), and the Title or Escrow Settlement company or Title Agent (referred to herein as "Title Company" or "you" or "your") set forth in the company profile submitted with your online application for use of the Encompass Title Center (the "Subscription Page") and, if applicable, inclusion in the Title Directory (collectively, the "Parties") and becomes effective by selecting the "I Accept the Agreement" check box below.

IMPORTANT -- READ CAREFULLY: This is a legal agreement between you and Ellie Mae. UPON ACCEPTING THIS AGREEMENT BY SELECTING THE "I ACCEPT THE AGREEMENT" CHECK BOX AT THE BOTTOM OF THIS AGREEMENT AND PAYING ELLIE MAE THE APPLICABLE FEES FOR ACCEPTING TITLE OR ESCROW ORDERS THROUGH THE TITLE CENTER, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. If you do not agree to the terms of this Agreement, do not select the "I ACCEPT THE AGREEMENT" check box, and, as a result, you will not be able to accept any orders for title or escrow services through the Encompass Title Center.

ANNUAL SUBSCRIPTION TO THE TITLE CENTER

If, on the Subscription Page, you choose one of the three (3) annual payment plans for subscribing to the Title Center, you will be entitled to the following services, which are subject to the following terms and conditions:

1. By subscribing to the Encompass Title Center and paying Ellie Mae for one of the three annual payment plans ("Annual Subscription Fee"), you will be able to accept and fulfill orders for title or escrow services through the Encompass Title Center and you will be listed in the Encompass Title Directory. The Title Directory is a listing of residential real estate title and closing companies and agents that are displayed to users of Ellie Mae's Encompass mortgage management system ("Encompass"). All title and closing companies and agents who subscribe to and use the Title Directory must be and remain in good standing with their state licensing authority during their respective listings and are required to pay Ellie Mae the applicable Annual Subscription Fee selected, as set forth in the Subscription Page (either Standard, Premium or Elite), which is subject to adjustment as further described herein. The Annual Subscription Fee you select will determine the number of accepted orders that are included in such Annual Subscription Fee ("Included Orders") and the additional fee you will pay Ellie Mae for each order in excess of the number of Included Orders ("Transaction Fee"). The Annual Subscription Fee you select must be paid in advance of your inclusion in the Title Directory and your ability to receive orders for title or escrow services through the Title Center. All Annual Subscription Fees are non-cancelable and nonrefundable during your one (1) year subscription term (the "Term"). By accepting this Agreement and choosing the annual subscription to the Title Center and the Title Directory, you hereby agree that Ellie Mae may charge the same credit card you used to subscribe to the Title Center the applicable Transaction Fee for each accepted order that exceeds the number of Included Orders. Such charges to your credit card will commence immediately following the date such Included Orders are exceeded.

2. Acceptance of payment of your Annual Subscription Fee by Ellie Mae will begin the Term. Although you may not change your subscription to the Title Center and the Title Directory during the Term, you will have an opportunity to change your Annual Subscription Fee or maintain the same Annual Subscription Fee for the following year by submitting a new online application, or you may cancel your subscription at the end of the Term. Ellie Mae has the right to have your Title Directory listing removed prior to the end of any Term in the event you breach any of the terms set forth in this Agreement.

PER ORDER SUBSCRIPTION TO THE TITLE CENTER

3. In the event you prefer to pay on a per order basis only rather than on an annual subscription basis, you must pay Ellie Mae the Transaction Fee per order as set forth in the Subscription Page under the Per Order Basis listing. You acknowledge and agree that if you opt to subscribe on a per order basis, you will be able to accept and fulfill orders for title or escrow services through the Title Center; however, you will not be entitled to: (i) a listing of your company within the Title Directory within Encompass; (ii) be eligible for the discounted and/or included Transaction Fees associated with the Annual Subscription Fees.

TERMS APPLICABLE TO BOTH THE PER ORDER AND THE ANNUAL SUBSCRIPTION FEE PAYMENT PLANS

4. In order to use the Title Center, you must: (i) represent that you are a state licensed title and/or closing company in good standing and (ii) pay Ellie Mae either the per order Transaction Fee or the Annual Subscription Fee, as set forth in your online application. Ellie Mae will only accept payment in the form of a valid credit card (MasterCard®, American Express®, Discover® or Visa®) in the name of the agent representing the branch of the Title Company. All applications are subject to approval and payment acceptance by Ellie Mae. In the event Ellie Mae is unable to charge your credit card as set forth herein for any reason, you will be unable to use the Title Center and will not be able to accept new orders until all monies owed are paid in full and the method of payment has been corrected.
5. You shall be solely responsible for ensuring that Encompass users receive a positive, satisfactory experience once they become your customers. If a customer is dissatisfied with services received from you, it is your responsibility to resolve the situation to the customers' reasonable satisfaction. You will not, at any time, represent that Ellie Mae is responsible for, or assumes any responsibility for, the quality of your services. You also acknowledge and agree that you must look exclusively to such customers for the payment of any fees you charge for the use of your services and orders and that Ellie Mae will not be responsible for your failure to collect such fees from your customers.
6. You are also responsible for paying any and all taxes, including any applicable sales taxes and value-added taxes, excises, customs duties or charges levied or imposed hereunder or as a result of accepting orders from Encompass users.
7. You shall also be in good standing with the state licensing authority for title and/or closing companies, as well as with Ellie Mae, as determined by Ellie Mae in its sole discretion, during the Term.

8. Furthermore, you are making the following representations by agreeing to this Agreement and subscribing to the Title Center, and Ellie Mae is relying upon them: (1) that you are authorized to advertise and display the requested business, product or service; (2) that your company profile as set forth on your application for use of the Title Center is truthful; (3) that you and your employees are in compliance with all laws and licensing requirements relating in any manner to the goods or services displayed; and (4) that you have the right to use and publish any requested name, address, trade name, trademark, service mark, picture, likeness, reproduction, endorsement, copyrighted or copyrightable item or other content and that such use complies with all applicable laws, license agreements and other obligations. You agree to notify us immediately in the event that any of these representations is no longer true and correct in all respects. You assume sole responsibility for the protection of any copyrights, trademarks, service marks and trade names owned wholly or partially by you or for which you are authorized to display. In the event we receive documentation demonstrating that another person or entity contests your right to display a name, trademark, service mark or other content, Ellie Mae may reject or discontinue your use of the Title Center and, if applicable, your Title Directory listing without liability to you until such time you have resolved that dispute with the other party to Ellie Mae's satisfaction.
9. Indemnification. You agree to indemnify, hold harmless, and, upon Ellie Mae's request, defend Ellie Mae against any claims, liabilities, and expenses, including but not limited to court costs and attorney's fees, incurred by Ellie Mae as a result of your acts or omissions, or those of your employees and agents, or any breach of your obligations or representations under this Agreement.
10. ELLIE MAE DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES TO YOU OF ANY KIND, EITHER EXPRESSED OR IMPLIED, REGARDING THE FUNCTIONALITY, PERFORMANCE OR RESULTS (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE) OF THE TITLE DIRECTORY, THE TITLE DIRECTORY LISTING, THE TITLE CENTER AND ANY SITE ELLIE MAE MAY CREATE FOR YOU. NOR DOES ELLIE MAE GUARANTEE THAT SUCH TITLE DIRECTORY, TITLE CENTER OR SITES WILL BE UNINTERRUPTED OR WILL MEET YOUR REQUIREMENTS.
11. Termination and Assignment. In addition to the foregoing, we may immediately terminate your use of the Title Center, and, if applicable, your subscription to the Title Directory should you breach any term applicable to this Agreement. Upon termination due to your breach, you acknowledge and agree that you will not be entitled to any refund of the Annual Subscription Fee and/or Transaction Fees previously paid by you prior to termination. You may not resell, assign, transfer or delegate any of your rights, responsibilities, duties or obligations without our prior written consent; in the event we give such consent, such assignee must, without any reservation, assume all of your rights, responsibilities, duties or obligations. Any attempt to resell, assign or transfer such rights without our consent shall result in immediate cancellation of your use of the Title Center and your subscription to and removal of your listing within the Title Directory, if applicable, without liability to Ellie Mae. Ellie Mae shall have the right to sell, assign or transfer this Agreement with all its rights, title and interest herein to any person, firm, or corporation at any time during the Term and such assignee shall acquire all of the rights and assume all of Ellie Mae's obligations hereunder.

12. Even if Ellie Mae is aware of the possibility of such damages to you, we shall not have any liability or responsibility whatsoever to you for any special, indirect, incidental, consequential, punitive or exemplary damages in connection with your use of the Title Center or your subscription to the Directory, if applicable, including without limitation, damages relating to loss of profit, loss of income or revenue, loss of goodwill, the rejection or removal of any advertising content, any delay in displaying or our failure to display content, or our failure to perform services. Our sole liability to you in the event of a failure to include you in the Directory in accordance with this Agreement shall be limited to, at our discretion, your inclusion within the Directory at a later date on the same or substitute site. In no event shall our liability for monetary damages exceed the amount you have actually paid to Ellie Mae under this Agreement during the three (3) months prior to any third party claim.
13. Notices. Any notice hereunder shall be in writing, and shall be sent by return receipt requested registered mail, confirmed facsimile or confirmed personal delivery to recipient's address set out in your company profile submitted with your application, unless changed by notice under this section, and if to Ellie Mae, sent to the attention of Ellie Mae's General Counsel at Ellie Mae's address listed in the first paragraph of this Agreement.
14. Any provision of this Agreement found to be illegal or unenforceable shall be deemed severed, and the balance of this Agreement shall remain in full force and effect.
15. Neither party's right to require performance of the other party's obligations hereunder shall be affected by any previous waiver, forbearance or course of dealing, unless or only to the extent of any waiver given in writing. Failure or delay by either party to exercise any of its rights, powers or remedies hereunder shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
16. This Agreement shall be governed in all respects by the laws of the State of California without regard to its conflict of laws provisions. Each party to this Agreement hereby consents to the jurisdiction and venue of the U.S. federal and California state courts located in the City and County of San Francisco, California.
17. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all oral or written prior statements, representations, discussions, negotiations and agreements. This Agreement may be amended only in writing signed by both parties. No provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted.
18. **ACCEPTANCE OF AGREEMENT.** If you agree to abide by the terms and conditions of this Agreement, please check the "I ACCEPT THE AGREEMENT" check box on the Title Center Subscription Page. If you do not agree to abide by the terms and conditions of this Agreement, you will not be able to use the Title Center and, if applicable, you will not be included in the Title Directory.