End-User License Agreement

IMPORTANT! PLEASE READ CAREFULLY.

This End-User License Agreement (“EULA”) is a legal agreement between you (“You”) and SurfScore, Inc. d/b/a Kodable (“Kodable”). Please read this EULA carefully before installing, accessing or utilizing the Kodable game (“Kodable Game”), because by installing it, clicking “I Agree,” or otherwise manifesting your assent to this EULA, You agree to be bound by the terms of this EULA. If you are under age 18, please: (i) have your parent or legal guardian review this EULA; and (ii) do not install or play the Kodable Game without the permission of your parent, legal guardian, or teacher.

For the purposes of this EULA, the Kodable Game is defined to include the object code for the Kodable Game; the data, databases, and data structures incorporated into the Kodable Game; all associated media and printed materials; online or electronic documentation; and any updates and upgrades that replace or supplement the Kodable Game that are not distributed with a separate license.

1. License Grant. The Kodable Game is licensed, not sold. Kodable grants to You a personal, non-transferable, and non-exclusive limited license to install and use the Kodable Game for your personal use. This license does not give you any title or ownership in the Kodable Game, and should not be construed as a sale or transfer of any intellectual property or other rights to the Kodable Game. All rights not specifically granted under this EULA are hereby reserved by Kodable and, as applicable, by its licensors.

2. Intellectual Property. Kodable owns all right, title, and interest in and to, or is duly licensed under or otherwise authorized to use by its suppliers, the Kodable Game and all intellectual property rights in and to the Kodable Game. No license or other right is granted herein except for the rights specifically set forth herein. By using the Kodable Game, You (i) acknowledge, and agree not to contest, Kodable’s proprietary rights in the Kodable Game; and (ii) agree not to disclose any confidential information of Kodable regarding the Kodable Game (including the Kodable Game itself) or that is otherwise disclosed to You in connection with this EULA, unless such disclosure is expressly allowed by this EULA.

3. Restrictions. You may not (and you may not permit any third party to):

   a. Reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the Kodable Game or of any files contained in or generated by the Kodable Game, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

   b. Rent, lease, license, sell, or lend the Kodable Game.

   c. Modify, adapt, or translate the Kodable Game, incorporate the Kodable Game into or with other software, or create derivative works based upon any part of the Kodable Game, including, but not limited to, any database or other content contained in the Kodable Game without the prior written permission of Kodable in each instance.
d. Remove or alter any copyright notices, product identification, or other notices on any copies of the Kodable Game.

Any failure to comply with the above or any other terms and conditions contained herein will result in the automatic termination of this license and the reversion of the rights granted to You hereunder to Kodable.

4. **Disclaimer of Warranty.** THE KODABLE GAME IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY OR OTHERWISE, KODABLE AND ITS SUPPLIERS DISCLAIM ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WITH REGARD TO THE KODABLE GAME, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF NONINFRINGEMENT OF THIRD PARTY RIGHTS AND THE IMPLIED REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE KODABLE GAME IS WITH YOU. NEITHER KODABLE NOR ITS SUPPLIERS WARRANT THAT THE FUNCTIONS CONTAINED IN THE KODABLE GAME WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE KODABLE GAME WILL BE UNINTERRUPTED OR ERROR-FREE.

5. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STATUTORY OR OTHERWISE, IN NO EVENT SHALL KODABLE OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR INDIRECT DAMAGES FOR PERSONAL INJURY, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION/DATA, OR ANY OTHER PECUNIARY LOSS OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE KODABLE GAME, EVEN IF KODABLE OR ITS SUPPLIER HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL KODABLE OR ITS SUPPLIERS BE LIABLE FOR ANY CLAIM BY A THIRD PARTY. IN NO EVENT SHALL KODABLE’S TOTAL LIABILITY TO YOU FOR ALL DAMAGES EXCEED TEN U.S. DOLLARS (US$10.00).

6. **Export Laws.** You may not use or otherwise export or re-export the Kodable Game except as authorized by United States law and the laws of the jurisdiction in which the Kodable Game was obtained. In particular, but without limitation, the Kodable Game may not be exported or re-exported, without proper authorization pursuant to U.S. law, (i) into (or to a national or resident of) any country, or to a person, subject to U.S. economic sanctions or other trade controls applicable to the Kodable Game; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, the U.S. Commerce Department's Denied Persons List, Unverified Parties List, Entities List, or the U.S. State Department's list of Debarred Parties; or (iii) otherwise in violation of or as prohibited by the laws, rules, regulations or administrative orders of the U.S., or any unit, agency or department thereof. By using the Kodable Game, You represent and warrant that You are not located in, under control of, or a national or resident of any such country or on any such list or order, or subject to any such prohibition.

7. **General.**

   a. **Governing Law and Jurisdiction.** This EULA shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any disputes relating hereto shall be
adjudicated only in the state or federal courts in California, and You hereby consent to the exclusive jurisdiction of said courts. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

b. Modifications. No modification or waiver of any provision of this EULA, nor consent to any departure herefrom shall in any event be effective unless the same shall be in writing and signed by an authorized representative of Kodable.

c. Severability. If for any reason a court of competent jurisdiction finds any provision of this EULA, or portion thereof, to be unenforceable, that provision of the EULA shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this EULA shall continue in full force and effect.

d. No Waiver. Unless otherwise agreed herein, no delay or failure on the part of any party in exercising any right hereunder shall impair any such right or any remedy of such party nor shall it be construed to be a waiver of any continuing breach or default hereunder or any acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default hereunder be deemed a waiver of any other breach theretofore or thereafter occurring.

e. Headings. The headings of the paragraphs herein are for convenience of reference only and are not to be considered in construing this EULA.

f. Complete Agreement. This EULA contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all agreements and understandings between the parties concerning the subject matter hereof.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS IS THE COMPLETE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES.