

EnCirca Security Lock Service Agreement

This Security Lock Service Agreement (this “**Agreement**”) is made and entered into by EnCirca, Inc. and any Affiliate thereof that is directly or indirectly involved with the provision of the Security Lock Service (collectively “**EnCirca**”), and the company identified above (“**Customer**”) as of the Effective Date. EnCirca and Customer may each also be referred to individually as a “**Party**” or collectively as the “**Parties**” throughout this Agreement.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, INCLUDING ALL ATTACHMENTS HERETO, AND CUSTOMER AND ENCIRCA HEREBY AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED AND DELIVERED AS OF THE EFFECTIVE DATE.

1. Definitions.

“**Account**” means Customer’s account in the Customer Portal to which the Admin User and Authorized Individuals have access to.

1.1 “**Admin User**” means the individual designated by Customer who is responsible for maintaining the Account, maintaining a current list of Authorized Individual(s) in the Account and resolving conflicting Security Lock Requests. If the designated Admin User is no longer employed by Customer, the Customer Principal Contact must designate a new Admin User upon EnCirca’s request. If the Customer Principal Contact is no longer employed by Customer, an officer of Customer shall designate the Admin User and update the Customer Principal Contact.

1.2 “**Affiliate**” means, with respect to each Party, any entity which directly or indirectly controls, is controlled by, or is under common control with, such Party.

1.3 “**Authorized Individual(s)**” means the individual(s) set that are authorized by Customer to direct the addition, removal and/or changes to Domain Names and/or Host Names placed on Security Lock. The Admin User is solely responsible for maintaining, updating or modifying the list of Authorized Individuals in the Account, and to the extent a conflict exists between the list of Authorized Individuals and the list set forth in the Account, the list of Authorized Individuals set forth in the Account shall control.

1.4 “**Confidential Information**” means material, data, systems and other information concerning the operation, business, projections, market goals, financial affairs, products, services, customers and Intellectual Property Rights of a Party that may not be accessible or known to the general public. Confidential Information shall include, but not be limited to, the terms of this Agreement and any information relating to the Reports (as defined in Section 2.3).

1.5 “**Customer Portal**” means the system (which includes, but is not limited to, the user interface, software, hardware, databases, servers, protocols, specifications, templates, documents rules and methodologies) through which Customer (i) accesses EnCirca’s domain name services; and (ii) maintains and accesses its Account.

1.6 “**Customer Principal Contact**” means the contact identified on the first page of this Agreement.

1.7 “**Domain Name**” means a second-level domain name registration within a TLD that may contain American Standard Code for Information Interchange (“ASCII”) characters (including 0-9, A-Z and the hyphen) or the characters

in an Internationalized Domain Name.

1.8 “**Domain Name System**” means the internet domain name system.

1.9 “**Force Majeure Event**” means an event or circumstance beyond the reasonable control of either Party including, but not limited to, earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, or boycott.

1.11 “**Intellectual Property Rights**” means any and all now known or hereinafter existing rights associated with intangible property, including but not limited to, registered and unregistered, United States and foreign copyrights, trade dress trade names, corporate names, logos, inventions, patents, patent applications, software, know-how and all other intellectual property and proprietary rights (or every kind and nature throughout the universe and however designated).

1.12 “**Internationalized Domain Name**” means a Domain Name that contains at least one label that is displayed in software applications, in whole or in part, in non-ASCII language-specific script or characters.

1.13 “**Law**” means any law, regulation, rule, court order, any directives of or arising from any government, emergency services organization, or other competent administrative or governmental authority or applicable court.

1.14 “**Name Server**” means a computer hardware or software server that implements a network service for providing responses to queries associated with Domain Names in a Security Lock TLD.

1.15 “**Security Lock Status**” means that, unless a different server status is specified by Customer in accordance with Section 2.1: (a) a Domain Name with one or more of the server statuses of: (i) ClientUpdateProhibited; (ii) ClientDeleteProhibited; and (iii) ClientTransferProhibited, such that an update, delete and/or transfer of such Domain Name is prohibited and (b) a Host Name with one or more of the server statuses of: (i) ClientUpdateProhibited and (ii) ClientDeleteProhibited, such that an update and/or delete of such Host Name is prohibited.

1.16 “**Security Lock Service**” means the EnCirca service that allows Customers to direct EnCirca to place Domain Names and/or Host Names on a Security Lock Status and the Reports provided by EnCirca to Customer.

1.17 “**Security Lock TLD**” means a TLD that is supported by EnCirca, which may be updated from time to time upon written notice to Customer by EnCirca, which notice may be via email.

1.18 “**Registry Operator**” means: the person or entity that has entered into a registry agreement with ICANN to serve as the registry operator for a Security Lock TLD.

1.19 “**Registry Services Provider**” means: the person or entity that provides certain back-end registry services to a Registry Operator.

1.20 “**Security Phrase**” means a specific phrase if provided and maintained in Customer’s Account by each Authorized Individual that the Authorized Individual must say to EnCirca when making a request.

1.21 “**TDRP**” means ICANN’s Transfer Dispute Resolution Policy that governs disputes involving the transfer of a Domain Name from one registrar to another.

1.22 “**TLD**” means Top-Level Domain of the Internet and is the last part of a Domain Name (i.e., the letters that follow the final ‘dot’ of any URL).

1.23 “**Trademark PDDRP**” means ICANN’s Trademark Post-Delegation Dispute Resolution Procedure for addressing trademark infringement claims associated with a TLD or a Domain Name.

1.24 “**UDRP**” means ICANN’s Uniform Domain-Name Dispute Resolution Policy which governs disputes between the Domain Name registrant and registrar over the registration and use of a Domain Name.

1.25 “**URS**” means ICANN’s Uniform Rapid Suspension System, which is a rights protection mechanism procedure for rights holders alleging trademark infringement associated with a Domain Name.

1.26 “**EnCirca System**” means the EnCirca systems that handle the receipt of data regarding the registration of Domain Names, including, but not limited to, the associated Name Servers; the dissemination of TLD zone files; the operation of the registry zone servers and the dissemination of contact and other information concerning Domain Name registrations as required by ICANN.

1.27 “**EnCirca Works**” means (a) all of EnCirca’s Confidential Information, the Security Lock Service, the Reports, the FTP Servers, the Name Server, the Customer Portal, the EnCirca System, and all documentation or other software, information, data, content, ideas, concepts, techniques, processes, configurations, materials, tools, templates, technology or API’s developed by or on behalf of EnCirca, or provided by EnCirca, pursuant to this Agreement or otherwise; (b) all other proprietary information of EnCirca; (c) all customizations, modifications, enhancements, derivative works, configurations, translations, upgrades, and interfaces in and to each of the items in (a) and (b) contained in this definition; (d) the Intellectual Property Rights in and to each of the items in (a) through (c) contained in this definition; and (e) the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Security Lock Service or documentation.

2. Security Lock Service Description.

2.12 Security Lock Service; Security Lock Requests. In exchange for the Security Lock Monthly Fees and in accordance with the terms and conditions set forth herein, EnCirca shall provide Customer with the Security Lock Service. In accordance with Sections 2.1.1 and 2.1.2, Customer may use the Security Lock Service by submitting requests to EnCirca to: (a) place Domain Names and/or Host Names in a Security Lock TLD on Security Lock Status; and/or (b) remove Domain Names and/or Host Names in a Security Lock TLD from Security Lock Status (each a “**Security Lock Request**”). Each Security Lock Request must: (a) list each Domain Name and/or Host Name to be placed on, or removed from Security Lock Status (Internationalized Domain Names must be listed in its ASCII-compatible encoding form (e.g., the IDN `ベリサイン.com` must be listed as `xn--eck7a3gwc3b.com`); and (b) if applicable, specify the client statuses to be applied to, or removed from, each Domain Name and/or Host Name in the Security Lock Request. Unless otherwise specified by Customer in the Security Lock Request, Domain Names submitted by Customer to be placed on Security Lock Status will be placed on client statuses of: (i) ClientUpdateProhibited; (ii) ClientDeleteProhibited; and (iii) ClientTransferProhibited and Host Names submitted by Customer to be placed on Security Lock Status will be assigned server statuses of: (i) ClientUpdateProhibited and (ii) ClientDeleteProhibited.

2.13 Submission Process. After the Customer has submitted and paid for the Security Lock Service, EnCirca will contact the Customer to confirm the completed order and the contact information provided by the Customer.

2.14 Customer Acknowledgements.

2.14.1 Customer hereby acknowledges and agrees that: (a) unless and until a Security Lock Request has gone through the Submission Process, EnCirca is not obligated to take any action with respect to the Domain Names and/or Host Names submitted by an Authorized Individual; (b) until the Security Lock Status is removed from a Domain Name and/or Host Name pursuant to a valid Security Lock Request, Customer will be charged and invoiced for such Domain

Names and/or Host Names; (c) EnCirca shall have the right to place any Domain Name(s) and/or Host Name(s) on Security Lock Status, remove any Domain Name(s) and/or Host Name(s) from Security Lock Status and take such other action, all as it deems necessary, in its unlimited and sole discretion: (i) in order to comply with an order, instruction or request by ICANN (if applicable to the Security Lock TLD) or the Registry Operator or Registry Services Provider for the Security Lock TLD; (ii) to protect the security and stability of the EnCirca System; (iii) in order to comply with a restriction(s) and/or requirement(s) imposed by Law or as a result of a UDRP, URS, TDRP or the Trademark PDDRP filing; and (d) by taking any of the above actions in subsection (c), EnCirca will not be deemed to be in breach of any of its obligations under this Agreement, in whole or in part.

2.15 Reports. When requested, EnCirca will make available to Customer a report sent to Customer's email or such other method as may be communicated to Customer from time to time (the "**Report(s)**"). Each Report will show the following information for each Domain Name and/or Host Name placed on Security Lock Status at any time during the reporting period: (a) the date on which Domain Name and/or Host Name was placed on Security Lock Status; (b) the Domain Name's and/or Host Name's status (i.e., lock, unlock, remove, re-lock); and (c) the date on which the Domain Name and/or Host Name was removed from Security Lock Status.

2.16 EnCirca Customer Support. EnCirca will provide Customer with customer support for the Security Lock Service via email (support@encirca.com) and telephone (+1.781-942-9975) Mon – Fri, 9:00 am – 5:00 pm EST.

2.17 Security Lock Order Form. Customer shall identify the Security Lock Services which it desires and is authorized to submit Security Lock Requests by completing and returning to EnCirca the Security Lock Order Form prior to making a Security Lock Request in the Security Lock Services. Customer shall submit to EnCirca an updated Security Lock Order Form in the event: (a) Customer wishes to update the domains which it desires and is authorized to submit Security Lock Requests; or (b) Customer no longer desires and/or no longer is authorized to submit Security Lock Requests for a particular domain name.

3. Authorized Individuals.

3.12 At any given time during the Term, Customer must have at least a minimum of two (2) Authorized Individuals, one of which must be designated as an Admin User, and may have up to a maximum of six (6) Authorized Individuals. EnCirca will send notifications regarding the Security Lock Service only to the Authorized Individuals recorded in the Account. If an Authorized Individual's employment has been terminated, or if an Authorized Individual is no longer authorized by Customer to request EnCirca to add, remove and make changes to Domain Names and/or Host Names placed on Security Lock Status, the Admin User must immediately modify the Account accordingly, and designate alternative individual(s) as Authorized Individual(s), if required. Authorized Individuals may access the Account to update their own contact information. In the event of a conflict between Security Lock Request(s) from an Authorized User(s) and Security Lock Request(s) from the Admin User, the Security Lock Request(s) from the Admin User shall prevail. In the event of a conflict between Security Lock Request(s) from two or more Authorized Individuals, EnCirca shall contact the Admin User to resolve such conflict by instructing EnCirca which Security Lock Request to proceed with.

3.13 Customer hereby agrees that each Authorized Individual must change their Security Phrase, if provided, upon a frequency set by EnCirca. Customer further agrees that each Authorized Individual will notify EnCirca within four (4) hours of learning that a Security Phrase has been compromised in any way. If an Authorized Individual has forgotten the Security Phrase, the Authorized Individual can authenticate himself or herself by sending a copy of his or her driver's license or appropriate government-issued ID to EnCirca via fax at +1.781-823-8911 or via email at support@encirca.com. EnCirca

reserves the right to take any additional steps it may deem necessary, in its sole discretion, to confirm the identity of an Authorized Individual.

3.14 If EnCirca receives a Security Lock Request from someone other than an Authorized Individual, Customer understands and agrees that EnCirca will direct such persons to speak with an Authorized Individual by providing his or her emergency contact information.

4. Customer Representations and Warranties and Obligations.

Customer Representations and Warranties. Customer represents and warrants that: (a) Customer and its Authorized Individuals are authorized to submit Security Lock Requests; (b) the Domain Names and/or Host Names submitted by Customer to EnCirca are submitted solely for the purposes of protecting such Domain Names and/or Host Names from inadvertent deletion, transfer or modification; (c) there is no legal restriction that would prevent Customer's submission of any Domain Name and/or Host Name to be placed on Security Lock Status; (d) the Security Lock Service shall not be used (i) for any purpose other than to protect a particular Domain Name(s) and/or Host Name(s) from inadvertent deletion, transfer or modification; or (ii) in a manner that could negatively impact the security and/or stability of EnCirca's infrastructure, including, but not limited to, the EnCirca System and/or the Domain Name System; (e) it will comply with all applicable Laws and regulations with respect to its use of the Security Lock Service; (f) it is not a party to any agreement that prohibits or would otherwise restrict its use of the Security Lock Service; and (g) it is, and will remain throughout the Term, in good standing and in compliance with, the applicable policies and agreements with each Registry Operator or Registry Services Provider for each TLD associated with the Domain Names and/or Host Names for which Customer submits Security Lock Requests.

5. Fees and Payments.

5.12 Security Lock Fees; Invoicing; Taxes.

(a) Security Lock Fees. Customer shall pay EnCirca the fees set forth for the Security Lock Service (the "Security Lock Fees"). EnCirca will invoice Customer after the end of each billing period for the Security Lock Fees, which will be based on the total number of Domain Names and/or Host Names on a Security Lock Status, and the total number of Security Lock Status updates at any time, and for any amount of time, during that billing period. Except in the event of suspension under Section 9.6, the Security Lock Fees will not be pro-rated for any reason, including but not limited to: (a) if a Domain Name and/or Host Name is placed on Security Lock Status for a partial month (*see* Example A below); and/or (b) if a Domain Name is placed on only one or two of the three applicable server statuses for Domain Names or a Host Name placed on only one of the two applicable server statuses for Host Names.

5.12.1 Invoicing and Payment. The Security Lock Fees for the Security Lock Service are due, and Customer's account will be debited monthly or annually on, the same day as the date on which the invoice is delivered to Customer. If Customer's account does not pay the invoice in a timely manner, additional Security Lock Requests may not be fulfilled until the outstanding invoice has been paid in full.

5.13 Nonpayment of Fees. Timely payment of the Security Lock Fees owing under this Section 5 is a material condition of performance under this Agreement. In the event that Customer fails to pay the Security Lock Fees within five (5) days of the date when due, EnCirca may: (a) suspend performance of and/or access to the Security Lock Service pursuant to Section 9.6 (which may include unlocking and removing any or all of Customer's Domain Names and/or Host Names that are currently on Security Lock Status); (b) terminate this Agreement in accordance with Section 9.4 of this Agreement; and (c) pursue any other remedy under this Agreement and the Law. Customer shall be liable for any reasonable attorneys' fees or collection agency fees incurred by EnCirca in connection with Customer's non-payment of any Security Lock Monthly Fees hereunder.

5.3 Taxes. The Security Lock Fees stated are exclusive of tax. All taxes, duties, fees and other governmental charges of any kind (including business, sales, services, use, and value-added taxes, but excluding taxes based on the net income

of EnCirca) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any of the Security Lock Service, documentation, and or any other deliverables hereunder shall be borne by Customer and shall not be considered a part of, a deduction from or an offset against such fees. All payments due to EnCirca shall be made without any deduction or withholding on account of any tax, duty, charge or penalty except as required by Law, in which case the sum payable by Customer from which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, EnCirca receives and retains (free from any liability in respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

6. License Grants.

License. During the Term of this Agreement and in exchange for the Security Lock Fees, EnCirca hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right with the consent of both parties. EnCirca reserves the right to amend all license grants.

7. **Indemnification.** Customer agrees to indemnify, defend and hold harmless EnCirca and its Affiliates and each of their respective directors, officers, employees and agents (collectively, the “EnCirca Indemnified Parties”) from all liabilities, claims, damages, costs and expenses, including without limitation, reasonable attorneys' fees and expenses, arising from any and all claims, suits, actions, or other proceedings brought by a third party against an EnCirca Indemnified Party relating to, arising from or in connection with: (a) any agreement between Customer and its customers; (b) Customer’s business, including without limitation, Customer’s products, services, advertising, application processes, systems and billing practices; (c) Customer’s breach of Section 4 (Customer Representations and Warranties and Obligations), Section 6 (License Grants), Section 13 (Confidentiality and Publicity) ; and (d) any claim related to a Domain Name registration, including, without limitation, any claim related to a Domain Name placed on, or removed from, Security Lock Status.

8. **Disclaimers.** THE SECURITY LOCK SERVICE IS PROVIDED “AS IS,” “WHERE IS,” AND “AS AVAILABLE,” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ENCIRCA DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, SATISFACTION OF REGISTRAR REQUIREMENTS, TITLE, NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE. ENCIRCA DOES NOT WARRANT THAT USE OF THE SECURITY LOCK SERVICE AND/OR ENCIRCA WORKS WILL BE UNINTERRUPTED OR ERROR FREE. ENCIRCA HEREBY DISCLAIMS, AND WILL NOT BE LIABLE FOR, ANY LOSS OF, UNAUTHORIZED ACCESS TO OR USE OF, OR DISCLOSURE OF DATA THAT IS NOT DUE TO A BREACH OF ANY PROVISION OF THIS AGREEMENT BY ENCIRCA.

9. Term; Termination, Modification or Suspension of the Security Lock Service.

9.12 Term. This Agreement shall commence upon the Effective Date and continue until terminated pursuant to Sections 9.2, 9.3 or 9.4 of this Agreement (the “Term”).

9.13 Early Termination by Customer or EnCirca. There are no refunds for early termination by customer. Either Party may terminate the Security Lock Service for a particular domain name and/or this Agreement for convenience by providing the other Party with thirty (30) days’ prior written notice.

9.14 Termination for Material Breach. In the event of a material breach of this Agreement, the non-breaching Party may terminate this Agreement, as applicable, if such breach is not cured within thirty (30) days after written notice of the breach.

9.15 Immediate Termination.

9.15.1 EnCirca may terminate this Agreement immediately without notice in its sole discretion in the event: (a) Customer fails to pay the Security Lock Fees within five (5) days of the date when due; (b) EnCirca is required to do

so in order to comply with Law; and (c) Customer (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment for the benefit of its creditors; (iii) institutes proceedings, or have proceedings instituted against it seeking relief or reorganization under any Laws relating to bankruptcy or insolvency; or (iv) a court of competent jurisdiction appoints a receiver, liquidator, or trustee over all or substantially all of Customer's property or provides for the liquidation of Customer's property or business affairs.

9.16 Modification of Security Lock Service by EnCirca. EnCirca may modify this Agreement to reflect changes, including, but not limited to, modifications, upgrades or deployments of new versions of the Security Lock Service upon sixty (60) days prior written notice to Customer, which notice may be provided via email. If such modification materially decreases the functionality of the Security Lock Service, Customer may terminate this Agreement immediately upon written notice to EnCirca.

9.17 Suspension of Security Lock Service. EnCirca may temporarily suspend the Security Lock Service in the event that EnCirca, in its sole discretion, determines that: (a) there has been a significant degradation of system processing; an urgent situation exists that requires such suspension in order to minimize threats to the operational stability and security of the Internet and/or EnCirca's infrastructure and systems; or (c) Customer fails to pay the Security Lock Fees within five (5) days of the date when due.

9.18 Effect of Termination.

9.18.1 Upon termination of the Security Lock Service for a particular TLD: (a) EnCirca will not complete any Security Lock Request for the applicable Security Lock TLD; (b) EnCirca shall have the right to remove the Security Lock Status from all applicable Domain Names and Host Names in the applicable Security Lock TLD; and (a) Customer shall continue to be responsible for payment of the applicable Security Lock Fees through the effective date of termination.

9.18.2 Upon termination of this Agreement: (a) EnCirca will not complete any Security Lock Request; (b) EnCirca shall have the right to remove the Security Lock Status from all of Customer's Domain Names and/or Host Names in the Security Lock TLDs; (c) Customer shall continue to be responsible for payment of all Security Lock Fees through the effective date of termination; (d) Customer shall pay EnCirca all Security Lock Fees owed under this Agreement, if any; and (e) both Parties shall return or dispose all of each other's Confidential Information; provided that each Party shall be entitled to retain (i) any documents or records containing or reflecting Confidential Information to the extent required by Law or its document retention policies, and (ii) any documents or records containing or reflecting Confidential Information that would be unreasonably burdensome to destroy (such as archived computer records). Notwithstanding the foregoing, each Party shall continue to be bound by the confidentiality obligations under this Agreement, including, but not limited to, restrictions on the disclosure and use of the Confidential Information retained by such Party.

9.19 Survival of Terms. The following shall survive the expiration or termination of this Agreement: (a) any payment obligations including Section 5 (Fees and Payments); (b) Sections 1 (Definitions), 6.2.1 (License Grants), 7 (Indemnification), 8 (Disclaimers), 9.7 (Effect of Termination), 9.8 (Survival of Terms), 10 (Limitation of Liability), 11 (Proprietary Rights), 12, 13 (Confidentiality and Publicity), 14 (Force Majeure), 15 (Entire Agreement), 16 (Governing Law), 17 (Severability), 18 (Independent Contractors/No Third Party Beneficiaries), 19 (Notices), 20 (Assignment), and 21 (Section Headings and Counterparts).

10. Limitation of Liability.

(A) EXCEPT FOR AS SET FORTH IN SUBSECTION (C) BELOW, EACH PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS UNDER THE AGREEMENT SHALL NOT EXCEED FIVE HUNDRED US DOLLARS (\$500 USD).

(B) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, UNDER ANY CIRCUMSTANCES, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST DATA, PROFITS, OPPORTUNITIES OR

REVENUES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(C) THE LIABILITY CAP SET FORTH IN SECTION 10(A) AND THE EXCLUSION OF DAMAGES SET FORTH IN SECTION 10(B) WILL NOT APPLY TO ANY LIABILITY ARISING FROM (I) DEATH OR SERIOUS BODILY INJURY; (II) SECTION 7 (INDEMNIFICATION); (III) CUSTOMER'S BREACH OF ITS OBLIGATIONS IN SECTION 6 (GRANT OF LICENSE); OR (IV) EITHER PARTY'S BREACH OF ITS OBLIGATIONS IN SECTION 13.1 (CONFIDENTIALITY).

11. Proprietary Rights. Except for any limited license expressly granted under Section 6 of this Agreement, Customer acknowledges that EnCirca and its licensors retain all right, title and interest in and to the EnCirca Works. Except as otherwise expressly stated in this Agreement, nothing in this Agreement shall create any right of ownership or license in and to the other Party's Intellectual Property Rights, and each Party shall continue to independently own and maintain its Intellectual Property Rights.

12. Confidentiality and Publicity.

12.12 Confidentiality. The Parties acknowledge that by reason of their relationship under this Agreement, they may have access to, and acquire Confidential Information of, the other Party. Each Party receiving Confidential Information (the "**Receiving Party**") agrees to maintain all such Confidential Information received from the other Party (the "Disclosing Party"), both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing its obligations under this Agreement. Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information which: (a) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (b) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (c) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; (d) is independently developed by the Receiving Party without resort to the Confidential Information; or (e) is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure, if permitted, in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure.

12.13 Publicity. Any and all press releases and other public announcements relating to the existence or terms of this Agreement or the related transactions between EnCirca and Customer must be approved in advance by the Parties in writing.

13. Force Majeure. Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations under this Agreement (excluding payment obligations) due to a Force Majeure Event, provided that the Party relying upon this Section 14 (Force Majeure): (a) gives written notice to the other Party as soon as possible; and (b) takes all steps reasonably necessary to mitigate the effects of the Force Majeure Event; provided further, that if a Force Majeure Event continues longer than thirty (30) days in the aggregate, either Party may immediately terminate this Agreement upon written notice.

14. Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or simultaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the Parties hereto with respect to the subject matter hereof, whether written or oral. Except as allowed pursuant to Section 9.5 above, this Agreement may only be amended, modified or supplemented by a written instrument duly executed by an authorized representative of each of the Parties.

Governing Law. The Parties agree that this Agreement, and any disputes arising out of or related to this Agreement, shall be governed by, construed, and enforced in all respects in accordance with the laws of the Commonwealth of Massachusetts, United States of America, excluding its conflict of laws rules. For all disputes arising out of or related

to this Agreement, the Parties submit to the jurisdiction and venue of the United States District Court for the state of Massachusetts and/or Middlesex county for Massachusetts. Each Party expressly waives any claim that the jurisdiction of such court with respect to personal jurisdiction is improper or that the venue is inconvenient or improper. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO SUCH CONTROVERSIES.

15. Severability. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not, in any way, be affected or impaired thereby.

16. Independent Contractors/No Third Party Beneficiaries. EnCirca and Customer are independent contractors. Neither Party is an agent, representative, or partner of the other and neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between EnCirca and Customer or to impose any partnership obligation or liability upon either Party. No provisions of this Agreement are intended to be, nor shall be interpreted as, providing or creating any third party beneficiary rights, or any other rights of any kind in any other party.

17. Notices. All notices shall be in writing via email or fax to EnCirca For Customer, such notice shall be addressed to the address set forth within this section below.

EnCirca, Inc.
400 West Cummings Pk, Suite 1725
Woburn, MA 01801
Fax: 1.781.823.8911
[Email: support@EnCirca.com](mailto:support@EnCirca.com)

18. Assignment. Neither Customer nor EnCirca may assign or transfer this Agreement without the prior written approval of the other Party; provided, however, that the sale of substantially all of the assets of either Party, or any of its subsidiaries, its acquisition by or merger into another company, shall not be deemed an assignment of this Agreement by such Party. Any assignment in violation of this Section 20 shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of Customer and EnCirca and neither Party may impose assignment fees or the like on the other Party.

19. Section Headings and Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one single agreement between the Parties. The section headings in this Agreement are for convenience of reference only and will not be given effect to interpret or construe any of the provisions of this Agreement.