

ENCIRCA ARBITRATION AGREEMENT

This Arbitration Agreement includes an agreement that all claims will be brought only in an individual capacity (and not as a class action or other representative proceeding). Please read it carefully. You may opt out of this agreement by following the opt out procedure described in Section 11. Unless otherwise stated, defined terms in this Arbitration Agreement have the meanings provided to them in the EnCirca Terms of Service. EnCirca may modify this Arbitration Agreement at any time with appropriate notice.

- 1. Informal Process First.** You agree that in the event of any dispute between you and EnCirca, you will first contact us and make a good faith sustained effort to resolve the dispute before resorting to arbitration under these Terms.
- 2. Binding Arbitration.** Any dispute or claim that remains unresolved after the informal dispute resolution described in Section 1 except for disputes relating to the infringement of our intellectual property rights or the access or use of the Service in violation of these Terms (a “Claim”) or Claims seeking more than \$10,000 in damages, will be resolved by binding arbitration, rather than in court, provided that you may assert Claims in small claims court located in Middlesex County, Massachusetts if your Claims qualify
- 3. No Judge or Jury.** There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow these Terms as a court would
- 4. Arbitrator and Rules.** The arbitration will be conducted before a neutral single arbitrator, whose decision will be final and binding, and the arbitral proceedings will be governed by the AAA Commercial Arbitration Rules, Consumer Due Process Protocol, and Supplementary Procedures for Resolution of Consumer Related Disputes. These rules can be found on the AAA website at www.adr.org. In the event of a conflict between the commercial arbitration rules and this Arbitration Agreement, this agreement shall control, and the parties shall designate another arbitrator.
- 5. Starting an Arbitration.** A party who intends to seek arbitration must first send written notice to EnCirca’s Legal Department of its intent to arbitrate (“Notice”). The Notice to EnCirca should be sent by any of the following means:(i) electronic mail to legal@EnCirca.com; or (ii) sending the Notice by U.S. Postal Service certified mail to:

EnCirca Inc, Attn: Legal Department, 400 West Cummings Park, Suite 1725, Woburn, MA 01801 US.

The Notice must (x) describe the nature and basis of the claim or dispute; and (y) set forth the specific relief sought. If we do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or EnCirca may commence an arbitration proceeding.
- 6. Format of Proceedings.** The arbitration will be conducted, at the option of the party seeking relief, by telephone, online, or based solely on written submissions.
- 7. Fees.** If you initiate arbitration, your arbitration fees will be limited to the filing fee set forth in the AAA’s Consumer

Arbitration Rules. Unless the arbitrator finds the arbitration was frivolous or brought for an improper purpose, we will pay all other AAA and arbitrator's fees and expenses. Any fees greater than the filing fees of the small claims court in your home jurisdiction will be paid by EnCirca.

- 8 **Individual Basis; Jury Trial Waiver.** To the fullest extent permitted by applicable law, you and EnCirca each agree that any proceeding to resolve a Claim will be conducted only in the respective party's individual capacity and not as a plaintiff or class member in any purported class, consolidated, multiple plaintiff or representative action ("Class Action"). If for any reason a Claim proceeds in court rather than in arbitration, you and EnCirca each waive any right to a jury trial. You and EnCirca expressly waive any ability to maintain any Class Action in any forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. Further, you agree that the arbitrator may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding, and that if this specific proviso is found to be unenforceable, then the entirety of this arbitration clause shall be null and void. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.
- 9 **Enforcement.** Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The United Nations Conventions on Contracts for the International Sale of Goods will have no applicability.
- 10 **Invalidity.** If a court of competent jurisdiction finds the foregoing arbitration provisions invalid or inapplicable, you and EnCirca each agree to the exclusive jurisdiction of the Federal and State courts located in Woburn, Massachusetts, and you and EnCirca each agree to submit to the exercise of personal jurisdiction of such courts for the purposes of litigating any applicable dispute or claim.
- 11 **Opting Out.** If you do not want to arbitrate disputes with us and you are an individual, you may opt out of this arbitration agreement by sending an email to legal@EnCirca-inc.com within thirty (30) days of the first of the date you access or use the Service.
- 12 **Confidentiality.** The parties shall maintain the confidential nature of the arbitration proceeding and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.