

Reseller Agreement

This Reseller Agreement (the “Agreement”) is made, entered into and executed on the date on which you electronically consent to the Agreement (the “Effective Date”), by and among you (“Reseller”), and EnCirca, Inc, the sponsoring ICANN-accredited registrar (“Registrar”) and may hereinafter be referred to as the “Company.” The Company and Reseller may be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Registrar processes Customers’ domain registrations, renewals and transfers using the Registrar’s credential (“Registration Services”);

WHEREAS, the Company provides Reseller Services and performs all technical, support and administrative functions relating to such Reseller Services, including Registration Services; and

WHEREAS, Reseller wishes to purchase and resell Reseller Services.

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

- a. “Advance Account” refers to a payment method where the balance of funds is maintained by Reseller with the Company.
- b. “Business Day” refers to a weekday, Monday through Friday, excluding all U.S. public holidays as applicable.
- c. “Confidential Information,” as used in this Agreement, shall mean all data, information and

materials including, without limitation, computer software, data, information, databases, protocols, reference implementation, documentation, functional and interface specifications, provided by the Company to Reseller under this Agreement, whether written, transmitted, oral, through Registrar Website or otherwise, that is marked as “Confidential” or that by its nature and content, it is reasonable to believe is confidential and proprietary.

- d. “Controller” shall be defined as it is under the GDPR.
- e. “Customer” refers to the direct or indirect customer of Reseller.
- f. “Fees” refers to the payment due to the Company pursuant to any Order.
- g. “GDPR” shall refer herein to Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons about the processing of personal data and on the free movement of such data.
- h. “gTLD” refers to the top-level domain(s) of the DNS delegated by ICANN pursuant to a registry agreement that is in full force and effect and does not include any country code TLD (“ccTLD”) or internationalized domain name (“IDN”) country code TLD.
- i. “ICANN” is the Internet Corporation for Assigned Names and Numbers.
- j. “Order” refers to a Reseller Service purchased directly or indirectly by a Reseller, pursuant to this Agreement.
- k. “Personal Data” is data about any identified or identifiable natural person.
- l. “Processor” shall be defined as it is under the GDPR.
- m. “RAA” is the Registrar Accreditation Agreement entered into by ICANN and Registrar, or one of Registrar’s affiliated companies.
- n. “Registered Name” is a domain name within the domain of a gTLD or ccTLD, consisting of two or more levels (e.g., john.smith.name), for which a TLD Registry Operator (or an affiliate or subcontractor thereof engaged in providing registry services) maintains data in a

database operated by the Registry Operator, arranges for such maintenance, or derives revenue from such maintenance.

- o. “Registered Name Holder” is the owner of record of a Registered Name as listed in the Whois record.
- p. “Registrar Website” refers to [www.encirca.com].
- q. “Registry Operator” is the person or entity responsible for providing registry services for a specific gTLD or ccTLD.
- r. “Reseller Contact Details” refers to the name, address, phone number, fax number, email address, and website(s) of Reseller that Reseller provides to Registrar.
- s. “Reseller Program” refers to any of the Company’s current reseller programs which provide Resellers and its Customers with direct or indirect use of the Company’s servers, software, interfaces, products and API and third party products, as currently described or later modified, and any reseller programs to be offered by the Company in the future.
- t. “Reseller Services” refers to all products and services which the Company is providing, rendering, or selling directly to Reseller or which Company makes available to Reseller for resale to Customers as applicable pursuant to this Agreement, including but not limited to the Registration Services.
- u. “Service Providers” refers individually and collectively to any third party that the Company may, directly or indirectly, engage, employ, outsource, or contract with for the fulfillment, provision, or purchase of Reseller Services and any other services and operations of the Company, and shall have the same rights as the Company to the extent required to perform services pursuant to the terms of this Agreement and as authorized by the Company.

2 RIGHTS AND OBLIGATIONS OF REGISTRAR

- t. The Company expressly reserves the right to deny any Order or cancel any Order within

thirty (30) days of processing. In such case, the Company may refund the fees charged for the Order, after deducting any processing charges for the Order.

- 2 Notwithstanding anything to the contrary, the Company expressly reserves the right to, without notice or refund: (i) access, delete, suspend, deny, cancel, modify, intercept, analyze, copy, backup, redirect, log usage of, monitor, limit access to or of, take ownership of, or transfer any Order; (ii) delete, suspend, freeze, or modify Reseller's access to Reseller Services; (iii) publish, transmit, share data from any Order with any person or entity, or contact any entity associated with an Order, to recover any payment from Reseller for any service rendered by the Company including Reseller Services related to this Agreement for which Reseller has been notified and requested to remit payment; (iv) publish, transmit, share data from any Order with any person or entity, or contact any entity associated with any Order pursuant to the Company's Privacy Policy, or (v) correct any mistakes associated with any Order, including with processing or executing any Order, with retroactive effect.
- 3 In case an Order has expired, is suspended, or if a Registered Name does not contain valid information to direct it to any destination, the Company may redirect any Registered Name to any Internet Protocol ("IP") address including, without limitation, to an IP address which hosts a parking page or a commercial search engine for monetization purposes ("Redirection"); provided however, Reseller may opt out of such Redirection by providing the Company with written notice; provided, further that Company may perform any activity, including Redirection or disruption of a web page as required under ICANN's Expired Registration Recovery Policy. Reseller acknowledges that the Company does not control and is not able to monitor the content on any redirected web page, including whether the content infringes any legal rights, including but not limited to, intellectual property rights or violates any other rights or any applicable rule, regulation or law. Accordingly, Registrar expressly disclaims any liability or damages caused directly or indirectly by such redirection.

- 4 The Reseller Services are subject to export control and economic sanctions laws, rules, regulations and/or Executive Orders administered or enforced by the United States Department of Commerce, Department of the Treasury's Office of Foreign Assets Control ("OFAC"), Department of State, and other United States authorities (collectively, "U.S. Trade Laws"). You may not use the Reseller Services to export or re-export, or permit the export or re-export, of software or technical data in violation of U.S. Trade Laws. In addition, by using the Reseller Services, you represent and warrant that you are not (a) an individual, organization or entity organized or located in a country or territory that is the target of OFAC sanctions as may be updated from time to time (including Cuba, Iran, Syria, North Korea or the Crimea region of Ukraine); (b) designated as a Specially Designated National or Blocked Person by OFAC or otherwise owned, controlled, or acting on behalf of such a person; (c) otherwise a prohibited party under U.S. Trade Laws; or (d) engaged in nuclear, missile, chemical or biological weapons activities to which U.S. persons may not contribute without a U.S. Government license. Unless otherwise provided with explicit written permission, the Company also does not register, and prohibits the use of any of the Reseller Services in connection with, any Country-Code Top Level Domain Name ("ccTLD") for any country or territory that is the target of OFAC sanctions. The obligations under this section shall survive any termination or expiration of this Agreement or your use of the Reseller Services. The Company may terminate any Reseller or Customer account that the Company determines, in its sole discretion, is in violation of any U.S. Trade Laws.
- 5 Registrar may utilize all information necessary from any and all Orders to comply with the data escrow deposit requirements established by paragraph 3.6 of the RAA and any other policies and procedures established by ICANN relating to data escrow deposits.

3. RIGHTS AND OBLIGATIONS OF RESELLER

1. Reseller agrees that Reseller Services under this Agreement may be made available to a Customer only after the Customer enters into a legally binding agreement which is no

less protective of the Company than this Agreement and which contains the same obligations on the Customer contained herein as applicable to Reseller. Reseller acknowledges and agrees that Reseller will be responsible for ensuring each Customers' compliance with applicable terms and conditions, including with respect to Section 3, and shall be responsible for any liability resulting from Customer's noncompliance with such terms and conditions. Reseller agrees that Registrar may contact its Customers to enter into the Customer Domain Registration Agreement and any other such agreements pursuant to this section from time to time.

2. Pursuant to the [Whois Accuracy Specification Program](#) published by ICANN, Reseller shall verify the email address of the Registered Name Holder by sending an email to the Registered Name Holder requiring an affirmative response from the Registered Name Holder which must be returned in a manner designated by the Reseller. Such verification must occur within fifteen (15) days of registration, transfer, or modification of the Registered Name Holder's Whois contact information. If the Registered Name Holder fails to verify the email address, Reseller shall suspend, or inform the Registrar to suspend, the Registered Name. In addition, within fifteen (15) calendar days after receiving any changes to the Whois contact information related to any Registered Name managed by Reseller and sponsored by the Registrar, Reseller shall attempt to validate such change. If the Registered Name Holder fails to verify the contact changes, Reseller shall suspend or inform the Registrar to suspend the Registered Name.
3. Pursuant to the [Expired Registration Recovery Policy](#) (the "ERRP"), Reseller shall send expiration renewal reminders to the Registered Name Holder via email and must suspend services to the domain upon expiration pursuant to the ERRP.
4. Reseller shall identify the sponsoring registrar upon inquiry from Customer.
5. Reseller shall comply with any ICANN-adopted Specification or Policy that establishes a program for accreditation of providers of proxy and privacy registration services (a

“Proxy Accreditation Program”). Among other features, the Proxy Accreditation Program may require that: (i) proxy and privacy registration services may only be provided by individuals or entities accredited by ICANN pursuant to such Proxy Accreditation Program; and (ii) Registrar prohibits Resellers from knowingly accepting registrations from any provider of proxy and privacy registration services that is not accredited by ICANN pursuant to the Proxy Accreditation Program. Until such time as the Proxy Accreditation Program is established, Reseller shall comply with the [Specification on Privacy and Proxy Registrations](#).

6. Reseller shall clearly display on any website it operates for domain registration or renewal a link to ICANN's Registrants' Benefits and Responsibilities (currently available at <http://www.icann.org/en/resources/registrars/registrant-rights/benefits>) and shall not take any action inconsistent with the corresponding provisions of the RAA or applicable law.
7. Reseller shall clearly display on any website it operates for domain registration or renewal a link to the appropriate ICANN webpage detailing Registrant Educational Information (currently available at <http://www.icann.org/en/resources/registrars/registrant-rights/educational>).
8. Reseller shall not display the ICANN or ICANN-Accredited Registrar logo, or otherwise represent themselves as accredited by ICANN, unless they have written permission from ICANN to do so.
9. Reseller shall be responsible for providing customer service, billing support and technical support to Customers.
10. Reseller acknowledges that in the event of any dispute and/or discrepancy concerning any data element of any transaction, the data element in Registrar's records shall prevail.
11. Reseller acknowledges that all information about any Customer that Reseller transmits to the Company is delivered in a manner that is reasonably accessible by the Company.
12. Reseller shall not make any changes to any information or configuration of an Order without explicit authorization from Customer of that Order.

13. Reseller acknowledges that Reseller Services may be obtained through Service Providers, and as such, changes in structure or contracts may occur, and as a result services may be adversely affected. Reseller acknowledges and agrees that the Company shall not have any liability associated with any such occasion.
14. Reseller agrees to provide to the Company complete and accurate Reseller Contact Details and to update any Reseller Contact Details within seven (7) calendar days of any change.
15. During the Term of this Agreement and for two (2) years thereafter, Reseller shall maintain the following records relating to its dealings with us, Customers, prospective Customers and/or their agents or authorized representatives, in electronic, paper or microfilm form:
 - i. All current and past Orders with Reseller, including dates and amounts of all payments, discount, credits and refunds;
 - ii. Customer's acceptance of Reseller's Customer Domain Registration Agreement, including date, time, and Registered Name;
 - iii. All information relating to the request for a transfer of a Registered Name to or from Registrar, in accordance with ICANN's [Transfer Policy](#) ; and
 - iv. All written communications with respect to Reseller Services.
16. Reseller shall provide these records to us within seven (7) calendar days of our request.
17. Reseller represents and warrants to the Company that Reseller shall provide notice to each new or renewed Registered Name Holder stating: (i) the purposes for which any Personal Data collected from Customer are intended; (ii) the intended recipients or categories of recipients of the data (including the Company, Registry Operator and others who will receive the data from Registry Operator); (iii) which data are obligatory and which data, if any, are voluntary; and (iv) how the Registered Name Holder or data subject can access and, if necessary, correct the data held about them. Reseller shall obtain consent from the Registered Name Holder for such data processing.
18. Reseller shall comply with the [Data Retention Specification](#) established by ICANN. In the

event Registrar must request disclosure of any information covered by the Data Retention Specification in order to perform required self-audits or as otherwise required to comply with a request from ICANN, Reseller is required to disclose information identified in the Data Retention Specification within seven (7) calendar days of Reseller's request. Any privacy policy established by Reseller shall disclose the potential use of this information in this manner.

19. Reseller shall comply with the validation requirements contained in Section 1(a)-(d) of the [Whois Accuracy Program Specification](#) Whois Accuracy Program Specification .
20. Reseller shall comply with ICANN's [Expired Registration Recovery Policy](#).
21. When requested by the Company, Reseller shall comply with all requests for production of information to confirm compliance within the date specified in the request. Failure to comply with such a request shall constitute a material breach of this Agreement and may result in termination and/or temporary suspension of services pursuant to Section 6 below.
22. Reseller agrees that by using Reseller Services, Reseller also agrees to the Company's Terms and Conditions found at www.encirca.com/legal. Reseller shall comply with all other terms or conditions established from time to time by the Company, Registrar's Service Providers, ICANN (including any requirement for which Registrar must comply with ICANN), and/or Registry Operators.

4. RESELLER'S GDPR OBLIGATIONS

Notwithstanding anything to the contrary contained herein, if the GDPR applies to you and/or your Customers, you also agree to the following additional terms:

1. For purposes of the GDPR, you acknowledge and agree, with respect to your Customers' Personal Data, that: (i) you and the Registrar are both a Controller of such Personal Data as it pertains to Registration Services; and (ii) you are the Controller and the Company is a Processor (as that term is defined in the GDPR) of such Personal Data as it pertains to all other Reseller Services that are not Registration Services. You also acknowledge and

agree that you are responsible for complying with all obligations of a Controller under the GDPR.

- 2 You represent and warrant that in using the Reseller Services, you will clearly describe in writing with your Customers how you plan to use any Personal Data collected and you will ensure you have a legitimate legal basis to transfer such Personal Data to us and that you have the necessary permission to allow us to receive and process Personal Data and to send communications regarding the processing of Customers' Personal Data to Customers on your behalf.
- 3 Controller to Processor. You agree to the terms of the Data Processing Addendum set forth at www.encirca.com/legal where you are a Controller and the Company is Processor as it pertains to all Reseller Services that are not Registration Services subject to the GDPR.
- 4 Controller to Controller. You also agree to the terms of the Data Processing Addendum set forth www.encirca.com/legal where both you and the Registrar are a Controller as it pertains to Registration Services subject to the GDPR.

5. RESELLER REPRESENTATIONS AND WARRANTIES

- 1 Reseller represents and warrants that: (i) it is a sole proprietor, partnership, or corporation duly incorporated, validly existing and in good standing under the laws of the state/country of its domicile; (ii) it has all requisite legal power and authority to execute, deliver and perform its obligations under this Agreement; (iii) the execution, performance and delivery of this Agreement by its officers, employees and agents has been duly authorized by Reseller; (iv) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Reseller in order for it to enter into and perform its obligations under this Agreement; (v) Reseller is not in violation of any U.S. Trade Laws; (vi) Reseller is not in violation of any third party's intellectual, proprietary or other rights; and (vii) there is no pending or, to the best of Reseller's knowledge, threatened claim, action, or proceeding against Reseller.

2 Reseller represents and warrants that Reseller does not and shall not infringe any intellectual property rights or other rights of any person or entity or does not publish any content that is libelous or illegal while using Reseller Services under this Agreement. Reseller further acknowledges that the Company cannot and does not monitor whether any services or the use of the services by Reseller under this Agreement, infringes the legal rights of others.

6. TERM AND TERMINATION

1 **Term.** The term of this Agreement commences on the Effective Date and continues until terminated pursuant to the terms herein (the “Term”).

2 **Termination.**

1 **Termination Rights.**

- (i) Unless otherwise provided in this Agreement, the Company may terminate this Agreement at any time by giving the Reseller thirty (30) days' written notice of termination. Any domain registrations made by Reseller with Registrar during the Term of this Agreement shall remain with Registrar unless the Registered Name Holder initiates a change of registrar as outlined in Section 6(c) below.
- (ii) The Company may terminate this Agreement at any time, with or without notice, in its sole discretion: (i) to protect the integrity and stability of Reseller Services; (ii) to comply with any applicable laws, government rules or requirements, or any applicable dispute resolution process; or (iii) to avoid any liability, civil or criminal, on the part of Registrar and/or its Service Providers, or their affiliates, subsidiaries, officers, directors and employees.

2 **Termination for Cause.** The Company may immediately terminate the Agreement by written notice to Reseller in the case of any actual or potential breach or violation of this Agreement, the Customer Domain Registration Agreement or any other agreements contemplated by this Agreement by Reseller or its Customers , including but not limited to any representations and warranties hereunder.

3 **Termination for Inactivity.** In the event Reseller has no transactions for a period of one hundred and eighty (180) consecutive days and no other currently active Reseller Services purchased by Customers, the Company may immediately terminate this Agreement by written notice to Reseller.

3 **Effect of Termination.**

1 Upon termination of this Agreement, Registrar will complete pending domain registrations or renewals of domain names processed by Reseller prior to the date of termination.

2 Immediately upon any termination of this Agreement, Reseller shall transfer to the Company all information deemed necessary by the Company regarding the Registered Name Holders.

3 Any and all domain name registrations made through Registrar during the Term of this Agreement shall remain with Registrar as registrar unless Registered Name Holder initiates a registrar transfer in compliance with [ICANN's Transfer Policy](#) and any other applicable transfer policies established by ICANN and/or Registrar Operator.

4 Registrar reserves the right in its sole discretion to refuse to renew domains and related services upon termination of this Agreement.

7 **FEES, PAYMENTS & TAXES**

1 **Reseller Discount.** Resellers will be provided a discount from Company's currently published retail pricing ("Reseller Price"). The Reseller is free to establish retail pricing for its own Customers. If the Company's retail pricing is lowered, the Reseller's discount may or may not be adjusted to match the above Reseller Price, at the discretion of the Company. Resellers on a pay-as-you-go plan will be provided a time-limited coupon to use during the check-out process. When a Reseller coupon expires, the Reseller will need to contact Company's Support to receive a new coupon.

2 **Advance Account.** For Resellers required to maintain an Advance Account. Payment to the

Advance Account may be via credit card.

3 **Fees.** As per the applicable Reseller Program terms, the Fees will either be collected at point of sale, deducted from the Advance Account or charged directly to the Customer when the Order is processed. The Company reserves the right to hold or otherwise cancel any Order for which there are insufficient funds in the Advance Account to cover the fees associated with the Order. Registrar may also deduct appropriate bank charges, processing charges, or other service fees it may levy against Reseller directly from the Advance Account. The Company reserves the right to hold or otherwise cancel any Order if Reseller does not maintain a valid credit card on file, if required by the Company.

4 **Chargebacks.** If Reseller issues a chargeback for any payment to Company, Company may immediately debit the Advance Account, if applicable, or charge Reseller for the amount of the chargeback as well as any fees levied against Company by its payment processor for such chargeback. Any negative balance on the Advance Account will be immediately due and payable via guaranteed funds. Company reserves the right to temporarily or permanently suspend Reseller's access to Reseller Services or terminate this Agreement if Reseller issues a chargeback.

5 **Refunds.**

a. Reseller may be eligible for a refund of an Order in the following circumstances (each a "Refund Event"):

- i. Registration of a Registered Name that is deleted within the add-grace period established by the appropriate Registry Operator and for which the Registrar is eligible to receive a refund from the Registry Operator. In most circumstances, the Registry Operator requires that such deletion be requested within five (5) days of the date of the registration.
- ii. Non-explicit renewals of a Registered Name for which the Registrar is eligible to receive a refund from the Registry Operator. In most circumstances, the Registry Operator requires that such refund must be requested within thirty (30) days of the

date of the non-explicit renewal; or

- b. The Company reserves the right to issue refunds in its sole discretion at any time in connection with any Refund Event. Refunds will be credited to Reseller's credit card on file or to Reseller's Advance Account. Refunds will not accrue, and shall not be paid under any circumstances, if (A) Reseller does not submit a request for a refund to Registrar within the timeframe required by the Registry Operator in Sections 7(d)(i)(A) and (B), (B) Reseller does not include current Reseller Contact Details with its request for such refund (C) Reseller's credit card information is not on file with Registrar at the time the refund is first due to be paid or Reseller does not then have an Advance Account with Registrar, or (D) Registrar is unable to obtain a full refund from Registry Operator for the applicable Refund Event.

6 Expiration of Registered Names.

- a. Reseller acknowledges that it is Reseller's responsibility to keep records and maintain reminders regarding the expiry of any Reseller Service purchased by or for a Customer. As a convenience to Reseller, and not as a binding commitment, we may notify Reseller of any such expiring Reseller Services via an email message sent to the email address listed in the Reseller Contact Details.
 - b. Reseller acknowledges that after expiration of a Registered Name, Reseller has no rights to such Registered Name, or any information associated with it, and that control of such Registered Name shall belong to Registrar. Following expiration of a Registered Name, Registrar may choose, in its sole discretion, to delete a Registered Name or to transfer the ownership of the Registered Name to any third party. Reseller acknowledges that Registrar shall not be liable to Reseller or any third party for any action performed under this clause.
7. **Taxes.** Reseller shall be responsible for any and all applicable taxes in connection with this Agreement and the Reseller Services.

8. INDEMNIFICATION

- a. **Indemnification of Registrar.** Reseller shall indemnify, hold harmless, and defend the Company and its subsidiary and parent entities, predecessors, successors, affiliates, and assigns, the Registry Operators, and all their respective current and former officers, directors, members, shareholders, agents, and employees (collectively, the “Indemnified Parties”) from any and all any actions, causes of action, suits, proceedings, claims, or demands of any third party and all resulting judgments, bona fide settlements, penalties, damages, losses, liabilities, costs, and expenses, including without limitation, reasonable attorneys’ fees and costs (each a “Claim”), which arise out of: (i) your breach of this Agreement or any of the Company’s policies applicable to the Reseller Services, (ii) the operation, registration or use of a domain registered by you, or (iii) any negligent act or omission by you.
- b. **Indemnification of ICANN and Registry Operators.** Reseller agrees to indemnify, defend, and hold harmless ICANN, Registry Operator(s) and their respective subcontractors, shareholders, directors, officers, employees, affiliates and agents from and against any and all Claims arising out of or related to your domain registrations and any disputes regarding the same. Some Registry Operators may not allow this indemnification provision to apply as contained herein, in such cases, this provision is in effect to the full extent permitted by law as applicable to such Registry Operator.

9. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY

- a. **Disclaimer of warranty.** THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR ANY OF ITS SERVICES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. FURTHER, WITHOUT ANY LIMITATION TO THE FOREGOING, THE COMPANY MAKES NO REPRESENTATIONS OR

WARRANTIES OF ANY KIND WHATSOEVER THAT REGISTRATION OR USE OF A REGISTERED NAME OR OF THE RESELLER SERVICES UNDER THIS AGREEMENT WILL PREVENT (i) CHALLENGES TO THE REGISTERED NAME OR (ii) SUSPENSION, CANCELLATION OR TRANSFER OF ANY REGISTERED NAME REGISTERED PURSUANT TO THIS AGREEMENT.

b. Limitation of liability.

YOU AGREE THAT NEITHER THE COMPANY NOR ANY OF THE INDEMNIFIED PARTIES, WILL BE LIABLE FOR ANY OF THE FOLLOWING: (i) SUSPENSION OR LOSS OF THE REGISTERED NAME ACQUIRED PURSUANT TO THIS AGREEMENT FOR ANY REASON; (ii) USE OF THE REGISTERED NAME BY YOU OR OTHERS, WHETHER OR NOT AUTHORIZED BY YOU TO HAVE SUCH USE; (iii) INTERRUPTION OF BUSINESS; (iv) ACCESS DELAYS, DENIAL OF SERVICE (DOS) ATTACKS OR ACCESS INTERRUPTIONS TO THIS SITE OR THE WEBSITE(S) YOU ACCESS TO OBTAIN THE RESELLER SERVICES; (v) DATA NON- DELIVERY, MIS-DELIVERY, CORRUPTION, DESTRUCTION OR OTHER MODIFICATION; (vi) EVENTS BEYOND THE CONTROL OF COMPANY OR ANY OF THE INDEMNIFIED PARTIES; (vii) THE PROCESSING OF ANY REGISTERED NAME; (viii) ANY FAILURES OF ENCRYPTION OR OTHER SERVICES PROVIDED; (ix) APPLICATION OF SECTION 14; OR (x) ANY LOSS OR DAMAGES THAT MAY RESULT FROM TERMINATION OF THIS AGREEMENT. THE COMPANY AND THE INDEMNIFIED PARTIES ALSO WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR

OTHERWISE, EVEN IF THE COMPANY OR ANY OF THE INDEMNIFIED PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE COMPANY'S OR ANY OF THE INDEMNIFIED PARTIES' MAXIMUM AGGREGATE LIABILITY EXCEED THE TOTAL ACTUAL AMOUNT PAID FOR THE RESELLER SERVICES.

10. INTELLECTUAL PROPERTY

Subject to the provisions of this Agreement, each Party will continue to independently own its respective intellectual property, including all patents, trademarks, trade names, domain names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property worldwide, whether or not registered. Any use of and improvements to intellectual property will inure to the benefit of, and continue to be owned by, the Party that owns such intellectual property. Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secret, or any other intellectual or other proprietary rights are granted by the Company to Reseller.

OWNERSHIP AND USE OF DATA

- a. Reseller agrees and acknowledges that the Company owns all rights, title and interests worldwide in Registrar's domain database ("Domain Database"), and all information and derivative works generated from such Domain Database, including without limitation information relating to Registered Names, Registered Name Holders, and the Reseller Services provided to you. Reseller further agrees and acknowledges that Registrar may use the following information in connection with providing Reseller Services and as required for domain registrations for which Registrar is the registrar of record: (i) the original creation date of the registration; (ii) the expiration date of the registration; (iii) the name, postal address, email address, telephone number, and where available fax number of the technical contact, authorized contact, zone contact and billing

contact for the domain registration; (iv) any remarks concerning the registered domain that appear or should appear in the Whois or similar database; and (v) any other information Registrar generates or obtains in connection with the provision of domain registration services, other than the domain being registered, the IP addresses of the primary nameserver and any secondary nameservers for the domain, and the corresponding names of those nameservers. Registrar does not have any ownership interest in your specific personal registration information outside of its rights in its Domain Database. Registrar agrees to take reasonable precautions to protect your specific personal registration information from loss, misuse, unauthorized access or disclosure, alteration or destruction.

- b. The Company and Service Providers and their designees/agents have the right to backup, copy, publish, disclose, use, sell, modify, process this data in any form and manner as may be required for compliance with any agreements executed by Registrar to provide the Reseller Services pursuant to the terms of this Agreement.

11. MODIFICATIONS TO RESELLER SERVICES AND AGREEMENT

- a. The Company reserves the right to modify or discontinue, temporarily or permanently, Reseller Services with or without notice at any time. The Company shall not be liable to Reseller or to any third party for any modification, suspension or discontinuance of Reseller Services.
- b. Except as otherwise provided in this Agreement, Reseller agrees that, during the Term of this Agreement, the Company may revise the terms and conditions of this Agreement. The Company will notify Reseller of any material changes to the Agreement, and, if Reseller objects, Reseller agrees that its only recourse is termination of this Agreement with ten (10) days' prior written notice to the Company pursuant to Section 16(e) below. In the event that revisions to the RAA or any applicable registry or other governmental or non-governmental authority contract are made, the Company may publish an amendment substituting the

revised agreement in place of this Agreement, or otherwise amending, modifying or replacing this Agreement, without prior notice to Reseller if required to do so by ICANN, applicable Registry Operator, or other governmental or non-governmental authority. Reseller agrees to periodically review the Registrar Website, including the current version of this Agreement, to be aware of any such revisions. The Company is not bound by nor should Reseller rely on any representation by (i) any agent, representative or employee of any third party that Reseller may use to apply for the Reseller Services; or (ii) on information posted on the Registrar Website of a general informational nature. Moreover, no employee, contractor, agent or representative of the Company is authorized to alter or amend the terms and conditions of this Agreement. Only the Company may amend this Agreement through its authorized amendment procedures.

¹² **CONFIDENTIALITY**

a. **Use of Confidential Information.** Reseller's use and disclosure of Confidential Information disclosed hereunder are subject to the term and conditions of this Section. With respect to the Confidential Information, Reseller agrees that: (i) Reseller shall treat as strictly confidential, and use all reasonable efforts to preserve the secrecy and confidentiality of all Confidential Information received from the Company, including implementing reasonable physical security measures and operating procedures designed to protect the same, which in any case, shall not be less stringent than the measures Reseller takes to protect its own confidential information; and (ii) Reseller Shall make no disclosures whatsoever of any Confidential Information to others, provided however, that if Reseller is a corporation, partnership, or similar entity, disclosure is permitted to Reseller's Officers and employees who have a demonstrable need to know such Confidential Information, provided Reseller shall advise such personnel of the confidential nature of the Confidential Information and of the procedures required to maintain the confidentiality thereof. The obligations set forth in this section shall be continuing; provided, however, that this section

imposes no obligation upon Reseller With respect to information that: (x) is disclosed after the Company's prior written approval; (y) is independently developed by Reseller without the use of the Confidential Information; or (z) is made generally available by the Company without restriction on disclosure.

- b. In the event of any termination of this Agreement: (i) all Confidential Information in Reseller's possession shall be immediately returned to the Company or, at the Company's sole option, Reseller shall certify as to the destruction of such Confidential Information; (ii) Reseller shall provide full voluntary disclosure to the Company of any and all unauthorized disclosures and/or unauthorized uses of any Confidential Information; and (iii) the obligations of this section shall survive such termination and remain in full force and effect for a period of five (5) years.
- c. Reseller agrees that the Company shall be entitled to seek all available legal and equitable remedies for the breach of this Section 13 by Reseller.

13. **ARBITRATION; GOVERNING LAW**

a. **Arbitration.**

You also hereby agree to the Company's Arbitration Agreement, which is incorporated into this Agreement by reference and can be found at www.encirca.com/legal.

- b. **Governing Law** Any controversy or claim arising out of or relating to this Agreement, the formation of this Agreement or the breach of this Agreement, including any claim based upon an alleged tort, shall be governed by the substantive laws of the Commonwealth of Massachusetts.

14. **MISCELLANEOUS**

- a. **Personal Data.** The Company incorporates its Privacy Policy by reference. Please read our Privacy Policy at www.encirca.com/legal. In addition, you hereby represent that you have provided the Company's Privacy Policy to any person whose personal data you disclose to the Company and that you have obtained their consent to the foregoing.

15 **Force Majeure.** Force Majeure. Neither Party shall be deemed in default of this Agreement to the extent of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, or any other cause beyond the reasonable control of such Party; provided, that the Party whose performance is affected by any such event gives the other Party written notice thereof within ten (10) Business Days of such event or occurrence.

16 **Assignment.** Reseller may not assign or transfer this Agreement or any of Reseller's rights or obligations hereunder, without the prior written consent of Registrar. In addition, Reseller must comply with any applicable ICANN inter-the Company transfer process. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. The Company may assign its rights and obligations under this Agreement and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without your consent. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. You agree that the Company may transfer your domain name from one accredited registrar to another accredited registrar without requiring your consent, to the extent not prohibited by ICANN or applicable registry rules or by applicable law.

17 **Publicity.** Reseller shall not create, publish, distribute, or permit any written, oral, or electronic material that refers to the Company or its Service Providers or uses any trademarks or service marks of the Company or its Service Providers without prior written consent. Reseller gives the Company the right to recommend and/or refer Reseller's name and details to Customers and use Reseller's name in marketing and promotional material about its use of the Reseller Services.

18 **Notice.** Notice to Reseller shall be sufficiently given if provided in writing and transmitted by email to the current email address included in the Reseller Contact Details. Notice to the Company shall be sufficiently given only if in writing and transmitted by email to the Company's email address below,

delivered personally or by a nationally recognized courier service, or mailed by prepaid registered mail addressed:

Attn: EnCirca, Inc
Address: 400 West Cummings Park
Suite 1725
Woburn, MA 01801 USA
Email: CEO@EnCirca.com

19. **Survival.** In the event of termination of this Agreement for any reason, Sections 8 (Indemnification), 9 (Warranty Disclaimer; Limitation of Liability), 10 (Intellectual Property), 13 (Confidentiality) and 14 (Arbitration; Governing Law), in addition to any section that by its nature should survive termination, shall survive.

20. **Language.** All notices, designations, and specifications made under this Agreement shall be made in the English language only.

21. **Dates and Times.** All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in the city of the registered office of the Company.

22. **Construction.** Any reference in this Agreement to gender shall include all genders, and words importing the singular number only shall include the plural and vice versa

23. **Disclaimer.** There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth herein.

24. **No Third-Party Beneficiaries.** This Agreement does not provide and shall not be construed to provide third parties (i.e., non-parties to this Agreement), including any Customer or a prospective customer of Reseller with any remedy, claim, and cause of action or privilege against the Company or its Service Providers.

⌘ **Independent Contractors.** Reseller and the Company are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, and sales representative or employment relationship between the Parties. Reseller will have no authority to make or accept any offers or representations on the Company's behalf. Reseller will not make any statement, whether on its Website or otherwise, that reasonably would contradict anything in this Agreement.

⌘ **Entire Agreement; Severance.** This Agreement, which includes the specific policies referenced herein, constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

This file was last modified on February 25, 2020.