

NEW TERMS OF USE

Effective Date: January 14, 2022

To download and/or print this Terms of Use (“Terms”), [click here](#).

To download and/or print the previous Terms of Use, [click here](#).

These Terms set forth a legally binding agreement between you and Encoura, LLC (“Encoura®”, “we”, “our”, or “us”), and govern your use of any online service location that posts a link to these Terms, and all features, content, and other services that we own, control and make available through such online service location (collectively, the “Service”).

PLEASE READ EACH PART OF THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE, SUCH AS YOUR GRANTS AND WAIVERS OF RIGHTS, THE LIMITATIONS OF OUR LIABILITY, YOUR INDEMNITY OF US, AND OUR ARBITRATION OF CERTAIN DISPUTES.

By using the Service, you accept these Terms, and consent to the collection, use, and sharing of your data and other activities as described in our [Privacy Policy](#). In some instances, both these Terms and separate terms will apply to your use of the Service (“**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless they expressly state otherwise. To the extent there is a conflict between these Terms and our Enrollment Agreement, the Enrollment Agreement will control except to the extent that any claims arise directly out of the use of the Service. As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions.

I. **Service Use**

A. **Accounts.** Our Service is intended for use by our member organizations, such as educational institutions and education service providers, and their authorized employees. When you register an account, and each time you log-

in to an account, you agree (on behalf of yourself as an individual user and your employer as the account holder): (i) to these Terms and consent to our collection, use and disclosure practices, and other activities as described in our [Privacy Policy](#); (ii) you are at least the age of majority in the jurisdiction in which you reside; (iii) you are acting on behalf of your organization, and are authorized by your organization to act on its behalf and bind it hereto; (iv) you will provide and keep accurate, current, and complete information on your account; (v) you will not use a username that violates the intellectual property or other right of any third party, or is offensive; (vi) you are solely responsible for all activities that occur under the account– whether or not you authorized the activity; (vii) you will abide by the Service and Content (defined below) use restrictions set out in these Terms; (viii) you are solely responsible for maintaining the confidentiality of any username and password you provide and will not transfer or share the username or password with any third party; (ix) you will immediately notify us if the username or password is lost or stolen, of any unauthorized use of the account, or of any other breach of security; and (x) as permitted by applicable law, we will not be liable for any loss or damage to you or any third party arising from your failure to comply with any of the foregoing obligations.

B. Content. The Service contains: (i) materials and other items relating to Encoura and its products and services, and similar items from our licensors and other third parties, including all layout, information, databases, articles, posts, text, data, files, images, scripts, designs, graphics, instructions, illustrations, photographs, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Service, and the compilation, assembly, and arrangement of the materials of the Service and any and all copyrightable material; (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Encoura; and (iii) other forms of intellectual property (all of the foregoing, collectively “Content”). All right, title, and interest in and to the Service and the Content is the property of Encoura or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

C. Limited License. Subject to your strict compliance with these Terms and the Additional Terms, Encoura grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download and copy (temporary storage only of website content and streaming audio and/or video files and a single Device download and storage of the mobile app), display, view, use, and play the Content on a personal computer, browser, laptop,

tablet, mobile phone or other Internet-enabled Device (each, a “**Device**”) and/or print one copy of the Content as it is displayed to you, in each case for your personal, non-commercial use only. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in Encoura’s sole discretion, and without advance notice or liability. Your unauthorized use of the Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

D. Restrictions. You agree to comply with all local, state, federal, national, foreign, and international laws, statutes, ordinances, regulations, treaties, directives, and agreements that apply to your use of the Service and Content. You further agree that you will not: (i) use the Service or Content for any political purpose; (ii) engage in any activity in connection with the Service or Content that is unlawful, harmful, offensive, obscene, violent, threatening, harassing, abusive, or otherwise objectionable to Encoura; (iii) harvest any information from the Service; (iv) reverse engineer or modify the Service; (v) interfere with the proper operation of or any security measure used by the Service; (vi) infringe any intellectual property or other right of any third party; (vii) use the Content in a manner that suggests an unauthorized association or is beyond the scope of the limited license granted to you; or (viii) otherwise violate these Terms or any applicable Additional Terms.

E. Availability and Termination. Encoura may immediately suspend or terminate the availability of the Service and Content, in whole or in part, to any individual user or all users, for any reason, in Encoura’s sole discretion, and without advance notice or liability. Upon suspension or termination of your access to the Service, or upon notice from Encoura, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination, including sections on Service Use (except for the limited license), Submissions, Copyright Infringement and DMCA Policy, Customer Support, Third-Parties, Service Features, Dispute Resolution, Disclaimer of Representations and Warranties, Limitations of Our Liability, Waiver of Injunctive or Other Equitable Relief, Indemnification, Updates to Terms, and General Provisions, will survive.

F. Reservation of All Rights. All rights not expressly granted to you are reserved by Encoura and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel,

industry custom, or otherwise. Any unauthorized use of any Content or the Service for any purpose is prohibited.

II. **Submissions**

The Service may allow you to submit content to us via the Service, including feedback and comments to us regarding your use of the Service (“**Submissions**”). You grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense, display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your Submissions and derivative works thereof, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or Devices now known or hereafter developed, and to advertise, market, and promote the same. You also irrevocably consent to our use and association of your name in connection with your Submissions and derivatives thereof. You agree to waive any moral rights that you may have in any Submissions, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future intellectual property rights relating to your Submissions. You agree that your Submissions will not: (i) promote any political or commercial purpose; (ii) defame, abuse, harass, stalk, or threaten others; (iii) use racially or ethnically offensive language; (iv) discuss or incite illegal activity; or (v) infringe any intellectual property or other right of any third party.

III. **Copyright Infringement and DMCA Policy**

Encoura asks our users to respect the intellectual property rights of others. It is our policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In Encoura’s sole discretion, Encoura may remove content that may be infringing on another person’s intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act (“**DMCA**”) and other applicable law, Encoura has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers. If we remove or disable access in response to a DMCA Notice (as defined below), we will make a good faith attempt to contact the owner or administrator of the affected site or content so that they may make a counter-notification. If you own a copyright in a work (or represent such a copyright owner)

and believe that your (or such owner's) copyright in that work has been infringed by an improper posting or distribution of it via the Service, then you may send us a written notice that includes all of the following:

- a legend or subject line that says: "DMCA Copyright Infringement Notice";
- a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
- a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Service location where the material appears);
- your full name, address, telephone number, and email address;
- a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
- your electronic or physical signature.

Encoura will only respond to DMCA Notices that it receives by mail, email, or facsimile at the addresses below:

By Mail: 701 Brazos Street, 5th Floor, Austin, TX 78701

By Email: contact@encoura.org

By Phone: 800-862-7759

It is often difficult to determine if your copyright has been infringed. Encoura may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and Encoura may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA. Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing, may be subject to liability. We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification. Without limiting Encoura's other rights, Encoura may, in appropriate circumstances, terminate a repeat infringer's access to the Service and

any other website owned or operated by Encoura. If access on the Service to a work that you submitted to Encoura is disabled or the work is removed as a result of a DMCA Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- a legend or subject line that says: “DMCA Counter-Notification”;
- a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the URL of the Service from which the material was removed or access to it disabled);
- a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- your full name, address, telephone number, email address, and the username of your account;
- a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Western District of Missouri), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and
- your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly and materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability. If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Service. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

IV. Customer Support

If you have any questions, please send an email to us here. You acknowledge that the provision of support is at Encoura's sole discretion and that we have no obligation to provide you with customer support of any kind. All legal notices to us must be mailed to: 701 Brazos Street, 5th Floor, Austin, TX 78701 (Attention: Legal Counsel). When you communicate with us electronically, you consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

V. Third-Parties

A. Third-Party Content and Sites. The Service may contain or may interact with third-party content that is not owned, controlled or operated by Encoura (collectively, "**Third-Party Services**"). We may also host our content on Third-Party Services. Encoura neither endorses nor controls such Third-Party Services, and you acknowledge and agree that we are not responsible or liable for the information, content, products, or services on or available from such Third-Party Services, or for the results to be obtained from using them. If you choose to access any such Third-Party Services, you do so at your own risk. This may include the ability to post content on Third-Party Services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-party Services.

B. Dealings with Third Parties. Any interactions, transactions, and other dealings that you have with any third parties found on or through the Service are solely between you and the third party. You hereby agree to indemnify Encoura against all claims, injury and/or damages including attorneys' fees that arise out of your use of any Third-Party Service.

VI. Service Features

A. Wireless Features. The Service may offer features that are available to you via your wireless Device including the ability to access the Service's features and upload content to the Service, and receive messages from the Service (collectively, "**Wireless Features**"). By using the Service, you agree that Encoura may collect information related to your use of the Wireless Features as described in our [Privacy Policy](#), and may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Service. Data rates and other carrier fees may apply.

B. Email Messages. You can opt out of receiving promotional emails from us by following the instructions as provided in emails to click on the unsubscribe link or by sending an email to us here with the word UNSUBSCRIBE in the subject field of the email. This will not affect subsequent subscriptions and if your opt-out is limited to certain types of emails the opt-out will be so limited. We reserve the right to send you emails relating to your account or use of our Service, such as administrative and service announcements and these transactional account messages may be unaffected if you choose to opt out from receiving our promotional emails.

VII. **Dispute Resolution**

Certain portions of this Section are deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and Encoura agree that we intend that this Section satisfy the “writing” requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement.

A. Binding Arbitration. If any controversy, allegation, or claim relates in any way to your use of the Service (collectively, “**Dispute**”), then you agree the Dispute shall be submitted to confidential binding arbitration in Jackson, Missouri, except that, to the extent you have in any manner violated or threatened to violate our intellectual property rights, we may seek injunctive or other appropriate relief in any state or federal court in the State of Missouri. You hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to venue and jurisdiction in the state and federal courts of Missouri. Arbitration under these Terms shall be conducted pursuant to the Consumer Arbitration Rules then prevailing at the American Arbitration Association (“AAA”) if the dispute is with an individual consumer and pursuant to the Commercial Arbitration Rules then prevailing at the AAA for all other disputes. These Terms shall otherwise be construed in accordance with the internal laws of the State of Missouri without regard to Missouri’s choice of law principles. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Encoura to pay a greater portion or all of such fees and costs in order for this Section VII(A) to be enforceable, then Encoura will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates’ lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be

confidential to the same extent. The arbitrator's award shall be final and binding and may be entered as a judgment in any court of competent jurisdiction. The losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the court in Jackson, Missouri or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award. This arbitration provision shall survive termination of these Terms or the Service.

B. Class Action Waiver. AS PERMITTED BY APPLICABLE LAW, DISPUTES WILL BE ARBITRATED ONLY ON AN INDIVIDUAL BASIS AND WILL NOT BE JOINED OR CONSOLIDATED WITH ANY OTHER ARBITRATIONS OR OTHER PROCEEDINGS THAT INVOLVE ANY CLAIM OR CONTROVERSY OF ANY OTHER PARTY. YOU AND ENCOURA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

C. Jury Waiver. AS PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON OR RELATING TO THESE TERMS, THE BREACH THEREOF AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF, EXCEPT TO THE EXTENT YOU HAVE IN ANY MANNER VIOLATED OR THREATENED OUR INTELLECTUAL PROPERTY RIGHTS AS STATED IN SECTION (VII)(A).

D. Small Claims Matters. Notwithstanding the foregoing, either of us may bring a qualifying claim of general dispute (excluding disputes where intellectual property rights are concerned) in small claims court, subject to Section VII(B).

E. The provisions of this Section VII shall supersede any inconsistent provisions of any prior agreement between the parties. This Section VII shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

VIII. Disclaimer of Representations and Warranties

AS PERMITTED BY APPLICABLE LAW: (A) THE SERVICE IS PROVIDED TO YOU ON AN "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS; (B) NEITHER ENCOURA NOR ANY OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "ENCOURA PARTIES") MAKE

ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE CONTENT OR OTHER SERVICES, WHETHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS; AND (C) BY ACCESSING OR USING THE SERVICES YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE. THIS SECTION IS NOT INTENDED TO LIMIT: (I) WARRANTIES PROVIDED BY MANUFACTURERS; OR (II) YOUR ABILITY TO RECOVER FROM PERSONAL INJURY.

IX. Limitations of Our Liability

AS PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE ENCOURA PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND INCLUDING ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN CONNECTION WITH (A) THE SERVICE, (B) THESE TERMS OR (C) YOUR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR ENCOURA HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. AS PERMITTED BY APPLICABLE LAW, THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. THIS SECTION IS NOT INTENDED TO LIMIT: (I) WARRANTIES PROVIDED BY MANUFACTURERS; OR (II) YOUR ABILITY TO RECOVER FROM PERSONAL INJURY.

X. Waiver of Injunctive or Other Equitable Relief

AS PERMITTED BY APPLICABLE LAW, YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY ENCOURA OR A LICENSOR OF ENCOURA.

XI. Indemnification

As permitted by applicable law, you agree to defend, indemnify and hold harmless the Encoura Parties from and against any and all claims, liabilities, damages, losses, costs and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your use of the Service; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property or privacy right; or (vi) any misrepresentation made by you. Encoura reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with Encoura's defense of any claim. You will not in any event settle any claim without the prior written consent of Encoura. This section is not intended to limit: (i) warranties provided by manufacturers; or (ii) your ability to recover from personal injury.

XII. Updates to Terms

These Terms (or if applicable Additional Terms), in the form posted at the time of your use of the applicable services to which it applies, shall govern such use (including transactions entered during such use). AS OUR SERVICE EVOLVES, THE TERMS AND CONDITIONS UNDER WHICH WE OFFER THE SERVICE MAY PROSPECTIVELY BE MODIFIED AND WE MAY CEASE OFFERING THE SERVICE UNDER THE TERMS OR APPLICABLE ADDITIONAL TERMS FOR WHICH THEY WERE PREVIOUSLY OFFERED. ACCORDINGLY, EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Therefore, you should review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the Terms (and any applicable Additional Terms) that applied when you previously used the Service will continue to apply to such prior use and any specific term to which we previously committed to apply to those terms (if applicable) (i.e., changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new,

revised or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You should frequently check the home page, your message account and the email you associated with your account for notices, all of which you agree are reasonable manners of providing you notice. You can reject any new, revised or additional terms by discontinuing use of the Service and related services.

XIII. **General Provisions**

A. **Consent or Approval.** As to any provision in these Terms or any applicable Additional Terms that grants Encoura a right of consent or approval, or permits Encoura to exercise a right in its “sole discretion,” Encoura may exercise that right in its sole and absolute discretion. No Encoura consent or approval may be deemed to have been granted by Encoura without being in writing and signed by an officer of Encoura.

B. **Severability; Interpretation; Assignment.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. Encoura may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Encoura.

C. **Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Encoura in exercising any rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms, or any applicable Additional Terms, will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

D. **International Issues.** Encoura controls and operates the Service from the U.S.A., and Encoura makes no representation that the Service is appropriate

or available for use beyond the U.S.A. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any sale of goods carried out as a result of your use of the Service. Software related to or made available by the Service may be subject to export controls of the U.S.A, and, except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

E. Investigations; Cooperation with Law Enforcement. Except as prohibited by applicable law, Encoura reserves the right to investigate and prosecute any suspected breaches of these Terms or the Service. Encoura may disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

F. California Consumer Rights and Notices. Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112 Sacramento, California 95834, or by telephone at (916) 445-1254. Their website is located at: <http://www.dca.ca.gov>. California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act and the California Shine the Light Act in our [Privacy Policy](#) and on how we comply with the California Consumer Privacy Act in our [California Privacy Notice](#).