4. **Representations and Warranties**. You represent, warrant and covenant to the Company, that:

to access, download or gather information from the Software other than such automated means may be intentionally made

property or other rights of any other person or entity, provided that the foregoing does not obligate you solely to the extent the Claim arises out of the Company's willful misconduct or gross negligence; and (ii) any appearance, testimony, deposition, production or other involvement in any way by the Company or any of its affiliated companies , or any of its or their officers, directors, employees, contractors, attorneys or agents in connection with any legal proceeding in connection with which the Software or your use thereof is being directly or indirectly relied upon, referred to or otherwise used by any party to such proceeding. The Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify the Company and you agree to cooperate with the Company's defense of these claims. You will not make any admission of liability or agree to any settlement in connection with any Claim without Company's prior written consent, which shall not be unreasonably withheld.

12. **Limitation of Liability and Damages**. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL THE COMPANY OR ITS AFFILIATES, OR ITS AND THEIR CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SERVICE PROVIDERS, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SOFTWARE, INCLUDING YOUR USE THEREOF, OR ANY OTHER INTERACTIONS WITH THE COMPANY, EVEN IF THE COMPANY OR A COMPANY REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY, IN WHICH CASE THE COMPANY'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW. IN NO EVENT SHALL THE TOTAL LIABILITY OF COMPANY OR ITS AFFILIATES, OR ITS AND THEIR CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, OR THIRD PARTY PARTNERS, LICENSORS OR SERVICE PROVIDERS TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR USE OF THE SOFTWARE EXCEED FIFTY U.S. DOLLARS.

13. **Arbitration**.

13.1 <u>Agreement to Arbitrate</u>. This Section 13 is referred to herein as the "**Arbitration Agreement**." The Parties that any and all controversies, claims, or disputes between you and Company arising out of, relating to, or resulting from this Agreement or the Software, shall be subject to binding arbitration pursuant to the terms and conditions of this Arbitration Agreement, and not any court action (other than a small claims court action to the extent the claim qualifies). The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

13.2 <u>Class Action Waiver</u>. THE PARTIES AGREE THAT EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH PARTIES AGREE OTHERWISE, THE

ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S).

13.3   Procedures. Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("**AAA**") rules and procedures (the "**AAA Rules**"), as modified by this Arbitration Agreement. If there is any inconsistency between the AAA Rules and this Arbitration Agreement, the terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of this Agreement as a court would, including without limitation, the limitation of liability provisions in Section 12. You may visit http://www.adr.org for information on the AAA and http://www.adr.org/fileacase for information on how to file a claim against the Company.

13.4   Venue. The arbitration shall be held in the county in which you reside if you are a US resident or at another mutually agreed location. If the value of the relief sought is $10,000 or less, you or Company may elect to have the arbitration conducted virtually or by telephone or based solely on written submissions, which election shall be binding on each Party, but subject to the arbitrator's discretion to require an in-person hearing if the circumstances warrant. Attendance at any in-person hearing may be made virtually or by telephone by either or both Parties unless the arbitrator requires otherwise.

13.5   Governing Law. The arbitrator will decide the substance of all claims in accordance with the laws of the state of California, without regard to its conflicts of laws rules, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different Software users, but is bound by rulings in prior arbitrations involving you to the extent required by applicable law.

13.6   Costs of Arbitration. Payment of all filing, administration, and arbitrator fees will be governed by the AAA's Rules. Each Party will be responsible for all other fees it incurs in connection with the arbitration, including without limitation, all attorney fees.

13.7   Confidentiality. All aspects of the arbitration proceeding, and any ruling, decision or award by the arbitrator, will be strictly confidential for the benefit of all Parties.

13.8   Severability. If a court decides that any term or provision of this Arbitration Agreement other than Section 13.2 is invalid or unenforceable, the Parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court decides that any of the provisions of Section 13.2 is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of this Agreement will continue to apply.

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14.   Miscellaneous.

14.1   <u>Changes</u>. The Company may make modifications, deletions and/or additions to this Agreement ("**Changes**") at any time. Changes will be effective: (i) thirty (30) days after the Company provides notice of the Changes, whether such notice is provided through the Software user interface, the Company website or otherwise; or (ii) when you opt-in or otherwise expressly agree to the Changes or a version of this Agreement incorporating the Changes, whichever comes first.

14.2   <u>Relationship of the Parties</u>. You and the Company are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the Parties hereto, or an employee-employer relationship. No Party shall have any right to obligate or bind any other Party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.

14.3   <u>Assignment</u>. You may not assign any of your rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign its rights and obligations under this Agreement in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement inures to the benefit of and shall be binding on the Company's permitted assignees, transferees and successors.

14.4   <u>Force Majeure</u>. You acknowledge that the Company will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

14.5   <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law. You agree that any action at law or in equity arising out of or relating to this Agreement or the Software that is not subject to arbitration under Section 13 shall be filed only in the state or federal courts in California (or a small claims court of competent jurisdiction) and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action. The failure of any Party at any time to require performance of any provision of this Agreement shall in no manner affect such Party's right at a later time to enforce the same.

14.6   <u>Waiver</u>. A waiver of any breach of any provision of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement. If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by the Company without restriction.

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14.7   <u>Headings and Wording</u>. Unless otherwise expressly stated in this Agreement, the words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, or other subdivision. The words "include" and "including" are not and should not be construed or interpreted as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month, and calendar year. Section headings are for reference purposes only, and should not be used in the interpretation hereof. No provision of this Agreement will be construed against either Party as the drafter thereof.

14.8   <u>Notices</u>. Under this Agreement, you agree that all agreements, notices, disclosures, and other communications that the Company provides to you electronically satisfy any legal requirement that such communications be in writing.

14.9   <u>Construction</u>. This Agreement shall be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either Party.

14.10   <u>Severability; Counterparts</u>. If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct.

14.11   <u>Entire Agreement</u>. This Agreement constitutes the complete, final and exclusive agreement between us with respect to the subject matter hereof, and shall not be modified except in writing, signed by both parties, or by a change to this Agreement made by the Company as set forth herein. Neither Party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.