

Terms of Use Agreement

Last Updated: November 20, 2023

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING THE SERVICES OR OTHERWISE AGREEING TO THIS AGREEMENT, YOU UNDERSTAND AND AGREE TO BE BOUND BY THIS AGREEMENT AND RECOGNIZE THAT YOU MAY BE WAIVING CERTAIN RIGHTS.

This Terms of Use Agreement (“**Agreement**”) is a legally binding agreement between you and Blind Nil, LLC and its affiliates and subsidiaries (collectively, “**Company**,” “**we**,” “**us**,” or “**our**”) and governs your access to and use of our website, including its features, content, programs, and services (the “**Site**”). By continuing to access and use the Content, you agree that such use is legally sufficient consideration under this Agreement.

THIS AGREEMENT CONTAINS A BINDING [ARBITRATION AGREEMENT](#) WHICH LIMITS YOUR RIGHTS TO BRING AN ACTION IN COURT, [BRING A CLASS ACTION](#), AND HAVE DISPUTES DECIDED BY A JUDGE OR JURY, AS WELL AS PROVISIONS THAT [LIMIT OUR LIABILITY](#) TO YOU.

YOUR CONTINUED USE OF THE SITE IS SUBJECT TO YOUR CONTINUED COMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT USE THE SITE.

CONTINUED ACCESS AND USE OF THE SITE AFTER CHANGES HAVE BEEN MADE TO THIS AGREEMENT CONSTITUTES YOUR ACCEPTANCE OF THE REVISED AGREEMENT THEN IN EFFECT. YOU AGREE THAT YOU WILL REVIEW THIS AGREEMENT PERIODICALLY AND THAT YOU SHALL BE BOUND BY THIS AGREEMENT AND ANY MODIFICATIONS TO IT.

If you are an individual accessing or using the Site on behalf of, or for the benefit of, any corporation, partnership, or other legal entity with which you are associated (“**Organization**”), then you are agreeing to this Agreement on behalf of yourself and such Organization, and you represent and warrant that you have the legal authority to bind such Organization to this Agreement. References to “you” and “your” in this Agreement will refer to both the individual using the Site and to any such Organization.

We are committed to making the Site accessible for all users and will continue to take steps necessary to ensure compliance with applicable laws. If you have difficulty accessing any content, feature, or functionality of the Site, please [Contact Us](#).

What’s Contained in This Agreement

Click on the links below to jump to that section of the Agreement.

- [Highlights of the Agreement](#)
- [Our Intellectual Property Rights](#)
- [Your Authorized Use of Our Sites](#)
- [Downloads](#)
- [Interactive Features](#)
- [Third-Party Content and Links](#)
- [Copyright Infringement Notices](#)
- [Updates to this Agreement](#)
- [Other Terms, Conditions, and Policies](#)
- [Important Legal Terms](#)
 - [Termination](#)
 - [Children](#)
 - [Disclaimer of Warranty](#)
 - [Limitation of Liability](#)
 - [Indemnity](#)
 - [Consent to Communication](#)
 - [Severability](#)
 - [Assignment](#)
 - [Government End Users](#)
- [Disputes, Arbitration, and Class Action Waiver](#)
- [Terms for Users in Certain Geographic Locations](#)
 - [New Jersey Residents](#)
 - [California Residents](#)
- [Contact Us](#)

HIGHLIGHTS OF THE AGREEMENT

This Highlights section is intended to provide you with a basic overview of the contents of this Agreement. However, please read the entire Agreement for a complete understanding of the terms you are agreeing to. The meaning of capitalized words can be found in the full Agreement. If there is a conflict between the terms of this Highlights section and the terms of the full Agreement, the terms of the full Agreement control.

(a) Our Rights

- All Content on the Services is protected by intellectual property rights—you may only make limited use of the Content you find on the Site, as described below.
- We may block you from accessing our Site.
- We are not liable for third-party content hosted on our Site, external websites linked to or from our Site, or errors regarding product information, availability or promotional offers.

[Read more about our rights and control of the Site and Content.](#)

(b) Your Use of Our Site

- Unless otherwise indicated, you only may use the Site and Content for your personal use as an individual.
- You may not violate any laws, infringe any rights, threaten, harass or impersonate others, or take other actions that harm us or other people or parties.
- You must not attempt to bypass security protections on the Site, introduce viruses or other harmful code, or use the Site to attack other websites or services.

[Read more about what you can and cannot do on the Site.](#)

(c) Important Things to Know

- By using the Site, you consent to the terms of this Agreement. We may update this Agreement from time to time, and we will use reasonable efforts to provide you with notice of these updates if they are material.
- **THIS AGREEMENT CONTAINS [LIMITATIONS ON OUR LIABILITY TO YOU](#), IMPORTANT [DISCLAIMERS OF WARRANTIES](#), AND [INDEMNIFICATION OBLIGATIONS](#) BY YOU.**

- **THIS AGREEMENT GOVERNS HOW DISPUTES WITH US WILL BE HANDLED, INCLUDING USING [BINDING ARBITRATION WITH A CLASS ACTION WAIVER](#).**
- Your use of the Site may be governed by other terms and conditions applicable to certain features or promotions. You should also read our [Privacy Policy](#).
- This Agreement contains information about how you can [Contact Us](#) regarding complaints, questions or copyright infringement claims.

[Read the complete Agreement below.](#)

COMPLETE AGREEMENT

OUR INTELLECTUAL PROPERTY RIGHTS

All names, logos, text, designs, graphics, trade dress, characters, interfaces, code, software, images, sounds, videos, photographs and other content appearing in or on the Site (“**Content**”) are protected intellectual property of, or used with permission or under license by, our Company. Such Content may be protected by copyright, trademark, patent or other proprietary rights and laws. This includes the entire Content of the Site, copyrighted and protected as a collective work. All intellectual property rights associated with the Site, and related goodwill, are proprietary to us or our licensors. You do not acquire any right, title or interest in any Content by accessing or using the Site. Any rights not expressly granted herein are reserved. Except as set forth below, the use of any Content available on the Site is strictly prohibited.

Subject to your compliance with this Agreement, we grant you a limited license to access and use the Site and its Content for personal and informational purposes. No Content from the Site may be copied, reproduced, republished, performed, displayed, downloaded, posted, transmitted, or distributed in any way without written permission of the rights owner, except that you may download or print one copy of specific Content or software made available for your downloading or printing for your personal, non-commercial home use, subject to your compliance with this Agreement and retain the same solely for as long as you continue to be permitted to access the Site. To use Content under such an exception, you must (i) keep any copyright, trademark, or other proprietary notices intact, (ii) use such Content pursuant to any licenses associated with such Content, (iii) not copy or post such Content on any networked computer or broadcast it in any media, (iv) make no modifications to any such Content, and (v) make no additional representations or warranties relating to such Content. Except as otherwise expressly authorized herein or in writing by us, you agree not to reproduce, modify, rent, lease, perform, display, transmit, loan, sell, distribute, or create derivative works based (in whole or in part) on all or any part of the Site or the Content.

[Back to the Top](#)

YOUR AUTHORIZED USE OF THE SITE

While using the Site, you are required to comply with all applicable statutes, orders, regulations, rules and other laws. You may not use the Site for any fraudulent or unlawful purpose, and you may not take any action to interfere with the Site or any other party's use of the Site. In addition, we expect users of the Site to respect the rights and dignity of others. For example, you may not do any of the following without our consent:

- Post, upload, share, transmit, distribute, facilitate distribution of or otherwise make available to or through the Site any content that is unlawful, harmful, harassing, defamatory, threatening, intimidating, fraudulent, tortious, vulgar, obscene, hateful, pornographic, spam, discriminatory, violative of privacy or publicity rights, infringing of intellectual property or other proprietary rights, or otherwise objectionable in our sole discretion, including unauthorized or unsolicited advertising;
- Post to or transmit through the Site any sensitive personally identifiable information about yourself or third parties, such as social security, credit card or bank account numbers, health or medical information, or other information concerning personal matters, unless specifically requested by us;
- Reproduce, duplicate, copy, publicly display, frame, mirror, sell, resell or otherwise exploit for any commercial purposes, any portion of, use of, or access to the Site;
- Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with any person or entity in connection with the Site, or express or imply that we endorse any statement you make;
- Violate, or attempt to violate, the security of the Site;
- Disseminate on the Site any viruses, worms, spyware, adware, or other malicious computer code, file or program that is harmful or invasive or is intended to damage or hijack the operation of, or monitor the use of, any hardware, software or equipment;
- Use scripts, macros or other automated means to impact the integrity of any Site features;
- Reverse engineer, disassemble, decompile, or otherwise attempt to derive the method of operation of the Site;
- Build a competitive product or service using the Site, build a product or service using similar ideas, features, functions, or graphics as the Site or determine whether the Site is within the scope of any patent;
- Interfere in any manner with the operation or hosting of the Site or monitor the availability, performance, or functionality of the Site;
- Use any data mining, bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, on the Site or to collect any information from the Site or any other user of the Site; or

- Assist or permit any persons in violating this Agreement or other applicable laws or rules governing the use of the Site.

Linking: You are granted a limited, non-exclusive right to create text hyperlinks to the Site for informational purposes, provided such links do not portray us in a false, misleading, derogatory or otherwise defamatory manner and provided that the linking website or service does not contain any material that is unlawful, harmful, harassing, defamatory, threatening, intimidating, fraudulent, tortious, vulgar, obscene, hateful, pornographic, spam, discriminatory, violative of privacy or publicity rights, infringing of intellectual property or other proprietary rights, or otherwise objectionable in our sole discretion, including unauthorized or unsolicited advertising. Additionally, notwithstanding the foregoing, and subject to compliance with any instructions posted in the robots.txt file located in a website's root directory, we grant to the operators of public search engines permission to use spiders to copy Content from the Site for the sole purpose of (and solely to the extent necessary for) creating publicly available, searchable indices of such Content, but not caches or archives of such Content, or for any machine-learning or training data purposes. We may revoke these permissions at any time.

[Back to the Top](#)

DOWNLOADS

The Site may allow you to download certain Content, applications, software, and other information or materials. We make no representation that such download will be error or malware free or fit for a particular purpose. Certain downloads may be subject to a separate agreement either with us or a third party.

[Back to the Top](#)

THIRD-PARTY CONTENT AND LINKS

Any information, statements, opinions or other information provided by third parties and made available on the Site are those of the respective author(s) and not us. We do not guarantee the validity, accuracy, completeness or reliability of any opinion, advice, service, offer, statement or other third-party content on the Site.

We may provide on the Site, solely as a convenience to users, links to websites, social media pages, mobile applications or other services operated by other entities. If you click these links, you will leave the Site. If you decide to visit any external link, you do so at your own risk, and it is your responsibility to take all protective measures to guard against viruses or other destructive elements. We do not make any warranty or representation regarding, or endorse or otherwise sponsor, any linked websites, services or the information appearing thereon or any of the products or services described thereon. Links do not imply that we are legally authorized to use

any trademark, trade name, logo or copyright symbol displayed in or accessible through the links; or that any linked website or service is authorized to use any of our trademarks, logos or copyright symbols.

We may maintain a presence on and link to social media websites, including Instagram, and others (collectively, “**Social Media Pages**”), to provide a place for people to learn more about us and our products and to share experiences with our products. When you visit these Social Media Pages, you are no longer on the Site, but rather a website operated by a third party. All comments, visuals and other materials posted by visitors to our Social Media Pages do not necessarily reflect our opinions, values or ideas. All visitors to our Social Media Pages must comply with the respective social media platform’s terms of use.

YOU AGREE THAT YOUR USE OF THIRD-PARTY WEBSITES, APPLICATIONS, SERVICES AND RESOURCES, INCLUDING WITHOUT LIMITATION YOUR USE OF ANY CONTENT, INFORMATION, DATA, ADVERTISING, PRODUCTS, OR OTHER MATERIALS ON OR AVAILABLE THROUGH SUCH THIRD PARTIES, IS AT YOUR OWN RISK AND IS SUBJECT TO THE TERMS AND CONDITIONS OF USE APPLICABLE TO SUCH SITES AND RESOURCES.

[Back to the Top](#)

COPYRIGHT INFRINGEMENT NOTICES

It is our policy to expeditiously respond to notices of alleged copyright infringement that comply with the United States Digital Millennium Copyright Act (“**DMCA**”). This section describes the information that should be present in these notices and the take down procedure we follow with respect to allegedly infringing material. If we receive proper notification of claimed copyright infringement, our response to these notices may include removing or disabling access to the allegedly infringing material and/or terminating or suspending users. If we remove or disable access in response to such a notice, we will make a good-faith attempt to contact the provider of the allegedly infringing content so that they may make a counter notification pursuant to the DMCA. It is our policy to accommodate and not interfere with standard technical measures used by copyright owners to identify or protect their copyrighted works that we determine are reasonable under the circumstances.

If you believe that any Content on the Site infringes upon any copyright which you own or control, you may send a written notification to our designated copyright agent (the “Designated Agent”), identified below, with the following information:

- A description of the copyrighted work or other intellectual property that you claim has been infringed, with sufficient detail so that we can identify the alleged infringing material;

- The URL or other specific location on the Site that contains the alleged infringing material described in above, with reasonably sufficient information to enable us to locate the alleged infringing material;
- Your name, mailing address, telephone number and email address;
- The electronic or physical signature of the owner of the copyright or a person authorized to act on the owner's behalf;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by you that the information contained in your notice is accurate and that you attest under penalty of perjury that you are the copyright owner or that you are authorized to act on the copyright owner's behalf.

Designated Agent: Carly Duncan

Email: carlyduncan@magnolia.com

Address: 900 Franklin Ave, Waco, TX 76701

Phone: 844-244-2006

To notify the provider of the allegedly infringing material to which we have removed or disabled access, we may forward a copy of your infringement notice, including your name and email address to the provider of the allegedly infringing material.

We may terminate users who, in our sole discretion, are deemed to be repeat infringers. Knowingly misrepresenting in a notification that material is infringing can subject you to damages, including costs and attorneys' fees, incurred by us or the alleged infringer. If you receive an infringement notification from us, you may file a counter notification pursuant with our Designated Agent pursuant to the DMCA. To file a counter notification, please provide our Designated Agent with the following information:

- Identification 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 was disabled;
- Your name, mailing address, telephone number and email address;
- The following statement: "I consent to the jurisdiction of [insert one of the following: (1) "the Federal District Court in which my mailing address is located", or (2) if you reside outside of the United States, "the United States District Court for the Western District of Texas";
- The following statement: "I will accept service of process from [insert the name of the person who submitted the infringement notification] or his/her agent";
- The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the affected material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled"; and

- Your signature, in physical or electronic form.

Upon receipt of valid counter notification, we will promptly provide the person who provided the original infringement notification with a copy of your counter notification and inform that person that we will replace the removed material or cease disabling access to it in ten (10) business days. Further, we will replace the removed material and cease disabling access to it not less than ten (10), nor more than fourteen (14), business days following receipt of your counter notice, unless Designated Agent first receives notice from the person who submitted the original infringement notification that such person has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the material on the Site.

[Back to the Top](#)

UPDATES TO THIS AGREEMENT

We may revise or otherwise change or update this Agreement from time to time. We will use reasonable efforts to notify you of such changes. However, please check the “Last Updated” legend at the top of this page to see when this Agreement was last revised. When changes are made to this Agreement, they will become immediately effective when published on this page unless otherwise noted. We encourage you to periodically review this Agreement—there may have been changes to our policies that may affect you. If you do not agree to the Agreement as modified, then you must discontinue your use of the Site. Your continued use of the Site will signify your continued agreement to this Agreement as revised. We will make reasonable efforts to notify you of material changes to this Agreement. Such efforts might include posting notice on the Site or an email to the address we have on file.

[Back to the Top](#)

OTHER TERMS , CONDITION, AND POLICIES

This Agreement applies exclusively to your access to, and use of, the Site and does not alter in any way the terms or conditions of any other agreement you may have with us for services, programs or otherwise. Additional terms, conditions, and/or policies may apply to use of specific portions of the Site and to the purchase of certain services and are included as part of this Agreement, whether they reference this Agreement or not.

Other types of agreements and policies that you may be subject to include, but are not limited to:

- Privacy policies
- Employment agreements
- Service contracts

Other policies and agreements are typically found by navigating the Site, typically by checking website headers and footers and by reviewing hyperlinked terms.

We have also adopted a [Privacy Policy](#) that you should refer to in order to fully understand how we use and collect information. To learn about our privacy practices, please refer to our [Privacy Policy](#).

Should we employ you, none of the materials provided on a Site constitute or should be considered part or of an employment contract or an offer for employment.

[Back to the Top](#)

IMPORTANT LEGAL TERMS

Termination

This Agreement is in effect until terminated by you or us. We may terminate this Agreement by notifying you using any contact information we have about you or by posting such termination on the Site. You may terminate this Agreement by providing written notice of termination, including your detailed contact information to us using the information in the [Contact Us](#) section. In addition to any right or remedy that may be available to us under applicable law, we may suspend, limit, or terminate all or a portion of your access to the Site or any of their features at any time with or without notice and with or without cause, including without limitation, if we believe that you have violated or acted inconsistently with the letter or spirit of this Agreement. We may be protected for liability from these actions under the Communications Decency Act, 47 U.S.C. § 230.

The provisions of this Agreement concerning protection of intellectual property rights, authorized use, disclaimers, limitations of liability, indemnity, and disputes, as well as any other provisions that by their nature should survive, shall survive any such termination.

Upon any such termination, (i) you must destroy all Content obtained from the Site and all copies thereof; (ii) and you will immediately cease all use of and access to the Site;. You agree that if your use of the Site is terminated pursuant to this Agreement, you will not attempt to access the Site under any name, real or assumed, and further agree that if you violate this restriction after being terminated, you will indemnify and hold us harmless from any and all liability that we may incur therefore. Your use of the Site after termination will be a violation of this Section, which survives any termination.

Children

The Services are not designed to appeal to minors, and we do not knowingly attempt to solicit or receive any information from children under thirteen (13) years of age. **YOU MUST BE AT LEAST THIRTEEN (13) YEARS OF AGE TO ACCESS AND USE THE SITE.** If you are under

the age of majority in your home state, which is eighteen (18) years in most states, you should use the Site only with the supervision of a parent or guardian who agrees to be bound by this Agreement. Additionally, certain Content or sections of the Site, as well as programs we may offer on the Site, may be explicitly limited to people over the age of majority. If you are not old enough to access the Site or certain sections or features of the Site, you should not attempt to do so.

Disclaimer of Warranty

WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, VALIDITY, ACCURACY OR RELIABILITY OF THE CONTENT AVAILABLE ON THE SITE OR ANY OTHER SITES LINKED TO OR FROM THE SITE. DOWNLOADING OR OTHERWISE OBTAINING ANY CONTENT THROUGH THE SITE IS DONE AT YOUR OWN RISK. THE SITE AND CONTENT ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

Limitation of Liability

WE AND OUR AFFILIATES, SUBSIDIARIES, DIVISIONS AND RELATED COMPANIES AS WELL AS OUR AGENTS, SUPPLIERS, AND SERVICE PROVIDERS (COLLECTIVELY, THE “RELEASEES”) WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OR THE INABILITY TO USE THE , CONTENT OR EXTERNAL LINKS, INCLUDING BUT NOT LIMITED TO DAMAGES CAUSED BY OR RELATED TO ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, OR ANY COMPUTER VIRUS OR FAILURE.

RELEASEES WILL ALSO NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF DATA OR PROFITS, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RELEASEES ALSO SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY ACTS, OMISSIONS OR CONDUCT OF ANY USER OR OTHER THIRD PARTY.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

REGARDLESS OF THE PREVIOUS SENTENCES, IF WE ARE FOUND TO BE LIABLE, OUR LIABILITY TO YOU OR TO ANY THIRD PARTY IS LIMITED TO THE GREATER OF THE ACTUAL TOTAL AMOUNT RECEIVED BY US FROM YOU OR THE LOWEST LIABILITY LIMITATION ALLOWED BY APPLICABLE LAW.

Indemnity

You agree to indemnify, defend and hold us and the Releasees and all of our directors, officers, employees, agents, shareholders, successors, assigns, and contractors harmless from and against any and all claims, damages, suits, actions, liabilities, judgments, losses, costs (including without limitation reasonable attorneys' fees) or other expenses that arise directly or indirectly out of or from (i) your breach of any provision of this Agreement; (ii) your activities in connection with the Site; or (iii) information you provide to us through the Site. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

Consent to Communication

When you use the Site or send communications to us through the Site, you are communicating with us electronically. You consent to receive electronically any communications related to your use of the Site. We may communicate with you by email or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing. All notices from us intended for receipt by you shall be deemed delivered and effective when sent to the email address you provide to us. Please note that by providing us with your email address, postal address or phone number, you are agreeing that we or our agents may contact you at that address or number in a manner consistent with our Privacy Policy.

Severability

If any provision of this Agreement is held to be invalid or unenforceable, it shall be replaced in interpretation by a valid and enforceable term that most closely aligns with the intent of the original provision. If that is not possible, the provision shall be removed, and the rest of the Agreement will be enforceable.

Assignment

We may assign this Agreement at any time with or without notice to you. You may not assign or sublicense this Agreement or any of your rights or obligations under this Agreement without our prior written consent.

Government End Users

Products or services provided under this Agreement are designed and intended for use by non-government entities and individuals. Use by or on behalf of a Government End User as defined under 15 C.F.R § 772.1 is strictly prohibited and requires prior written authorization from us. If authorization is granted by us, the authorized Government End User must abide by applicable regulations, including but not limited to regulations in 48 C.F.R Chapter 1 and 41 C.F.R §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a).

[Back to the Top](#)

DISPUTES, ARBITRATION, AND CLASS ACTION WAIVER

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT OR TO PURSUE CLAIMS IN A CLASS OR REPRESENTATIVE CAPACITY.

ARBITRATION USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY, ALLOWS FOR MORE LIMITED DISCOVERY THAN IN COURT, AND IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. YOU MAY CHOOSE TO BE REPRESENTED BY A LAWYER IN ARBITRATION OR PROCEED WITHOUT ONE. THIS ARBITRATION PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. IF, HOWEVER, EITHER THE CLASS ACTION WAIVER OR COORDINATED CLAIMS PROVISION BELOW ARE FOUND INVALID, THEN THE SPECIFIC INVALID PROVISION WILL BE UNENFORCEABLE AND WILL BE SEVERED AND THE REMAINDER OF THE ARBITRATION PROVISIONS WILL REMAIN IN FULL FORCE.

Agreement to Arbitrate

You and we agree that any dispute, claim or controversy, including those known or unknown that may be later discovered, arising out of or relating to this Agreement, other agreements on the Services, or the [Privacy Policy](#), or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be either determined by binding arbitration in Waco, Texas before one arbitrator or submitted to small claims court in the State of Texas. If the arbitrator finds this location to be unreasonably burdensome to you, a new location may be selected or arbitration may be conducted over the phone, using video conferencing, or similar. You may be entitled to an in-person hearing near your place of residence. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any arbitration arising out of or related to this Agreement shall be conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules.

No Class Actions

YOU AGREE THAT ANY CLAIMS OR ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR OUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ARBITRATION OR CLASS ACTION. Further, unless both you and we agree otherwise, the arbitrator may not consolidate more than one person's claims with your claims and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator may award declaratory or 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.

Seeking Arbitration

If you elect to seek arbitration or file a small claim court action, you must first send to us, by certified mail, a written notice of your claim ("**Notice**"). The Notice to us must be addressed to: P.O. Box 889, Waco, TX 76703. If we initiate arbitration, we will send a written Notice to an email address you have previously provided to us, if available. We may also use any other means to contact you, such as through a phone number you have provided. A Notice, whether sent by you or by us, must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("**Demand**"). If you and we do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or we may commence an arbitration proceeding or file a claim in small claims court. Arbitration forms can be downloaded from www.jamsadr.com. If you are required to pay a filing fee, after we receive Notice that you have commenced arbitration, we will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than US \$10,000 or the arbitrator determines the claims are frivolous, in which event you will be responsible for filing fees.

Hearing

If your claim is for US \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic or video hearing, or by an in-person hearing as established by the JAMS Rules. If your claim exceeds US \$10,000, the right to a hearing will be determined by the JAMS Rules. In the event that the arbitration will be conducted solely on the basis of submitted documents, the arbitrator's decision and award will be made and delivered within six (6) months of the selection of the arbitrator, unless extended by the arbitrator. Except as expressly set forth herein, the payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules.

Award

In the event arbitration awards you damages of an amount at least US \$100 greater than our last documented settlement offer, we will pay your awarded damages or US \$2,500, whichever is greater.

Injunctive Relief

Notwithstanding the foregoing, you and we both agree that you or we may sue in court to enjoin infringement or other misuse of intellectual property rights or in other scenarios where injunctive relief is appropriate. In the event a court or arbitrator having jurisdiction finds any portion of this Agreement unenforceable, that portion shall not be effective, and the remainder of the Agreement shall remain effective. No waiver, express or implied, by either party of any breach of or default under this Agreement will constitute a continuing waiver of such breach or default or be deemed to be a waiver of any preceding or subsequent breach or default.

Confidentiality

You and we shall maintain the confidential nature of the arbitration proceeding and the 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.

Coordinated Proceedings

If 25 or more individuals initiate Notices of dispute with us raising similar claims, and counsel for the individuals bringing the claims are the same or are coordinated for these individuals (“**Coordinated Claims**”), the claims shall proceed in arbitration in a coordinated proceeding. Counsel for the individuals and our counsel for shall each select five cases to proceed first in arbitration in a bellwether proceeding (“**Test Cases**”). The remaining cases shall not be filed in arbitration until the first ten have been resolved. If the parties are unable to resolve the remaining cases after the conclusion of the Test Cases, each side may select another five cases to proceed to arbitration for a second bellwether proceeding. This process may continue until the parties have determined an objective methodology to make an offer to resolve each and every outstanding claim. A court will have authority to enforce this clause and, if necessary, to enjoin the mass filing of arbitration demands against us. Individuals bringing Coordinated Claims shall be responsible for up to US \$250 of their filing fees or the maximum permissible under the applicable arbitration rules. All applicable statutes of limitations and defenses based upon the passage of time will be tolled while the Coordinated Proceedings specified in this Section are pending. We will take such action, if any, required to effectuate such tolling.

Governing Law and Rules

This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of conflict or choice of law rules. You

and we acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). In any arbitration arising out of or related to this Agreement, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages. In any arbitration arising out of or related to this Agreement, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits. The parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement) with respect to any final award in an arbitration arising out of or related to this Agreement.

Severance of Arbitration Agreement

If the clauses concerning and describing the procedures and obligations related to Coordinated Claims and Test Case procedures is or becomes invalid or unenforceable, then the remaining entire arbitration agreement and any clauses concerning, relating to, specifying or otherwise describing the arbitration agreement shall be severed from this Agreement. However, any duty of confidentiality whether or not such duty is connected with arbitration shall survive such severance.

[Back to the Top](#)

TERMS FOR USERS IN CERTAIN GEOGRAPHIC LOCATIONS

New Jersey Residents

If you are a consumer residing in New Jersey, the following provisions of this Agreement do not apply to you (and do not limit any rights that you may have) to the extent that they are unenforceable under New Jersey law: (i) Disclaimer of Warranty; (ii) Limitation of Liability; (iii) Indemnity; and (iv) under Disputes, Arbitration, and Class Action Waiver and the governing law provisions (solely to the extent that your rights as a consumer residing in New Jersey are required to be governed by New Jersey law). According to N.J.S.A. 56:12-16, you may have additional rights if you are a New Jersey resident and other provisions of this Agreement are found to violate an established legal right.

California Residents

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at [\(916\) 445-1254](tel:9164451254) or [\(800\) 952-5210](tel:8009525210).

If you are a California resident, you agree to consciously waive all claims, both known and unknown that may be later discovered and expressly forgo and waive all protections as by California Civil Code Section 1542, which states, “[a] general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” By using this Site, you agree that these California Civil Code Section 1542 protections no longer apply to you.

CONTACT US

If you have questions about this Agreement, or if you have technical questions about the operation of the Site, please contact us through this [online form](#) or by writing us at carlyduncan@magnolia.com. If you have any questions or comments about our company or our services or have other customer service needs, please click here for information on contacting our customer service representatives.