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(EULA)



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16. MISCELLANEOUS

16.1. This Agreement will constitute the complete and exclusive agreement between you and TransMagic, notwithstanding any variance with any purchase order or other written instrument submitted by you, whether formally rejected by TransMagic or not. The acceptance of any purchase order you place is expressly made conditional on your consent to the terms set forth herein. The English version of this Agreement will be the version used when interpreting or construing this Agreement. The terms and conditions contained in this Agreement may not be modified except in a writing duly signed by you and an authorized representative of TransMagic. All licensors of TransMagic are third party beneficiaries under this Agreement in order to provide each such licensor with the right to individually (at its sole discretion) directly and fully enforce your obligations under this Agreement for the benefit of each such licensor and to institute and/or join any action against you for a breach of any of the terms and conditions of this Agreement. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, and the parties will substitute for the invalid provision a provision which most closely approximates the intent and economic effect of the invalid provision. This Agreement shall be construed (as to both its validity and performance), governed by, and enforced in accordance with the laws of the State of Colorado. In the event of a dispute regarding the interpretation, application or breach of this Agreement ("Dispute"), a party shall submit the Dispute to arbitration conducted by a single neutral, independent and impartial arbitrator engaged in the practice of law, under the then-current rules of the International Centre for Dispute Resolution, a division of the American Arbitration Association. The arbitrator has authority to award any relief, including injunctive relief. Each party will bear its own costs and attorneys' fees, and will share equally in the fees and expenses of the arbitrator. The arbitration will occur in Denver, Colorado, United States. The proceedings will be conducted in English. The parties agree to submit to the jurisdiction of Denver County, Colorado for the purposes of any legal action or proceeding that arises out of or relates in any way to this Agreement or the relationship of the parties. Notwithstanding the foregoing, it is expressly agreed that either party may seek injunctive relief, at any time, in an appropriate court of law or equity to enforce its rights hereunder. Any waiver, amendment, or modification of any provision of this Agreement must be in writing to be effective. No failure or delay by a party to exercise any right it may have by reason of the default of the other party will operate as a waiver of default or as a modification of this Agreement or

will prevent the exercise of any right of the non-defaulting party under this Agreement. This Agreement will not be governed by the United Nations Convention of Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

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