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**Documentation** means the user guide, help information, information files (e.g., "About" files), and/or other technical documentation (but not marketing collateral) delivered by Merly to You with the Software, in digital, paper, or other format.

**Feedback** means all analyses, suggestions, data, and other feedback and information that are provided by You and related to the Software or Documentation.

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### 4. PAYMENTS.

**Fees.** You agree to pay Merly all one-time and recurring fees and other charges in the amounts and at the times consistent with the terms of the subscription plan You purchase on Merly's website via PayPal (**Subscription**).

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## 8. INDEMNIFICATION.

**You.** You agree to defend Merly against any demand, suit, action, or other claim by any third party that arises from Your breach of this EULA and Your negligence or willful misconduct and to indemnify Merly for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded in an adverse judgment based on any such claim.

**Conditions.** Your indemnification obligations hereunder are conditioned on (a) Merly providing prompt written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (b) You having sole control and authority to defend, settle or compromise such claim. Merly may participate in the defense at its sole cost and expense. You will not enter into any settlement (other than for payment of money subject to its indemnity) that adversely affects Merly's rights or interests without Merly's prior written approval, not to be unreasonably withheld. You shall not be responsible for any settlement You do not approve in writing.

## 9. LIMITATION OF LIABILITY.

EXCEPT TO THE EXTENT THAT ANY EXCLUSION OR LIMITATION OF LIABILITY IS VOID, PROHIBITED OR UNENFORCEABLE BY APPLICABLE LAW, IN NO EVENT SHALL MERLY (OR ITS IN-LICENSEES) BE LIABLE TO YOU CONCERNING THE SUBJECT MATTER OF THIS EULA, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OF DATA, LOSS OR INTERRUPTION OF USE, OR COST TO PROCURE SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (C) DAMAGES, IN THE AGGREGATE, IN EXCESS OF AMOUNTS YOU PAID TO MERLY FOR THE

SERVICE DURING THE PREVIOUS SIX (6)-MONTH PERIOD, EVEN IF MERLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE ESSENTIAL TERMS, WHICH ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS EULA AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

## 10. TERM AND TERMINATION.

**Term.** This EULA shall commence upon Your acceptance of these terms by selecting the "Accept" button or by accessing, downloading, installing or using the software in any manner and shall continue for the duration of Your monthly or yearly Subscription. You may cancel Your Subscription at any time for convenience via PayPal's subscription system. In connection therewith, this EULA will terminate, and Merly may terminate Your access to the Software at the conclusion of the paid-up term. In the event Merly terminates Your access to the Software, Merly is not responsible for loss of any data, information, functionality, or other loss as a result of such termination.

**Convenience.** Merly may terminate this EULA at any time for its convenience upon at least 30 days prior written notice to You. This Agreement may be terminated earlier by either Party (a) if the other Party materially breaches any provision of this Agreement and fails to cure such breach within 20 days (10 days in the case of payment related breach) after receiving written notice of such breach from the non-breaching Party.

**Effects of Termination.** Upon expiration or termination of this EULA for any reason, all rights, obligations, and licenses of the Parties hereunder shall cease, except that the following shall survive: (a) all obligations that accrued prior to the effective date of termination (including without limitation, payment obligations) and remedies for breach of this EULA; (b) You shall stop using, de-install, and destroy all copies of the Software and Documentation; and (c) the provisions of Sections 4 (Payments), 5 (Confidentiality), 6 (Proprietary Rights), 7 (No Warranties and Disclaimers), 8 (Indemnification), 9 (Limitation of Liability), 11 (General Provisions), and this Section 10.

## 11. GENERAL PROVISIONS.

**Entire Agreement.** This EULA constitutes the entire agreement, and supersedes all prior negotiations, understandings, or agreements (oral or written), between the Parties about the subject matter of this EULA. Any additional, different or inconsistent terms on any related purchase order, confirmation or similar form, even if signed by the Parties hereafter, shall have no force or effect under this EULA. This EULA may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. As we work to improve our Software, the terms of this EULA may need to change along with our Software. We reserve the right

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**Publicity.** Upon receipt of written permission from You, Merly will include Your name and/or logo in customer lists and presentation materials that may be published and distributed as part of Merly's marketing and promotional efforts. Except for the foregoing or as required by any applicable law or regulation, neither Party may issue any press release or other public announcement concerning the arrangements under this Agreement without the other Party's prior written consent, not to be unreasonably delayed, conditioned or withheld.

**Governing Law.** This EULA shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to its conflicts of law provisions. In the event of any conflict between US and foreign laws, regulations, and rules, US laws, regulations, and rules shall govern. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the implementation of the Computer Information Transactions Act in any jurisdiction shall apply to this EULA. The sole jurisdiction and venue for actions related to this EULA will be the state or federal courts located in Massachusetts and both Parties consent to the exclusive jurisdiction of such courts with respect to any such action.

**Remedies.** Except as expressly provided otherwise, each right and remedy in this EULA is in addition to any other right or remedy, at law or in equity. The failure of either Party to enforce its rights or remedies under this EULA at any time or for any period will not be construed as a waiver of such rights or remedies, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. Each Party agrees that, in the event of any breach or threatened breach of Section 5 or Section 6 by You, Merly will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, in addition to any other remedy, Merly shall be entitled

to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of proving actual damages or posting any bond or surety.

**Notices.** Any notice or other communication hereunder shall be in writing and either personally delivered or sent via confirmed facsimile or confirmed email, recognized express delivery courier, or certified or registered mail (prepaid and return receipt requested), addressed to the other Party at its address specified herein, or at such other address designated in a subsequent notice. All notices shall be in English, effective upon receipt.

**Assignment.** This EULA and Your rights and obligations hereunder are personal to You and may not be assigned, in whole or in part, without Merly's prior written consent, at its sole discretion. Without Your consent, Merly may subcontract performance of all or any part of the Support Service, and Merly may assign this EULA (and all of its rights and obligations hereunder) to any of its affiliates or to any successor to all or substantially all of its business which concerns this EULA. This EULA shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties hereto.

**Force Majeure.** Neither Party shall be liable for any delay or failure in performing its obligations hereunder that is related to or arises out of any event, cause, condition, restriction, change in law or regulation, government order or guidance, risk to public health, safety, or welfare, or other circumstance beyond its reasonable control.

**Independent Contractors.** The Parties shall be independent contractors in their performance under this EULA, and nothing contained herein will constitute either Party as the employer, employee, agent, or representative of the other Party, or both Parties as joint venturers or partners for any purpose.

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