

## 9G BACKUP™ END USER LICENSE AGREEMENT

LAST REVISED: APRIL 19, 2012

THIS 9G BACKUP™ END USER LICENSE AGREEMENT (“EULA”) REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

PLEASE READ THIS EULA CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION BEFORE CLICKING THE “ACCEPT” BUTTON OR DOWNLOADING OR USING THE 9G BACKUP™ SOFTWARE (“Software”) ACCOMPANYING THIS EULA AND RELATED SERVICES (together with Software, the “Cogitate Services”). BY CLICKING THE “ACCEPT” BUTTON OR DOWNLOADING OR USING THE SOFTWARE, YOU ARE ENTERING INTO AND AGREEING TO BE BOUND BY THE TERMS OF THIS EULA AND THE TERMS AND CONDITIONS OF THE:

- 9G BACKUP™ Account Registration Form;
- Cogitate Privacy Statement located at [www.9gbackup.com/legal/privacy.aspx](http://www.9gbackup.com/legal/privacy.aspx)
- 9G BACKUP™ Website Terms of Use located at [www.9gbackup.com/legal/webterms.aspx](http://www.9gbackup.com/legal/webterms.aspx)
- Cogitate Pricing Policy located at [www.9gbackup.com/legal/paymentpolicy.aspx](http://www.9gbackup.com/legal/paymentpolicy.aspx)
- Cogitate Business Associate Agreement located at [www.9gbackup.com/legal/hipaa-baa.aspx](http://www.9gbackup.com/legal/hipaa-baa.aspx), to the extent that You indicated on the 9G BACKUP™ Account Registration Form that You are subject to the requirements set forth in Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or (2) provided a written notification, consistent with the terms hereof, to Cogitate explicitly stating that You are subject to HIPAA,

(collectively, the “Underlying Agreements”) AND INCORPORATED HEREIN BY THIS REFERENCE.

AS DESCRIBED BELOW, CLICKING THE “ACCEPT” BUTTON OR DOWNLOADING OR USING THE SOFTWARE ALSO OPERATES AS YOUR CONSENT TO AUTOMATIC UPDATES OF THIS SOFTWARE WITHOUT FURTHER NOTICE TO YOU.

IF YOU COMPLY WITH THIS EULA, YOU HAVE THE RIGHTS BELOW FOR EACH LICENSE YOU ACQUIRE.

1. **GENERAL.** The terms “Cogitate,” “Our” or “Us” refer to Cogitate Inc., a Michigan corporation, and its subsidiaries and affiliates. The terms “You” or “Your” refer to an individual

or entity that is using Cogitate Services (each individually, as a “Party” and, collectively, as the “Parties”).

## 2. ACCOUNT REGISTRATION AND MAINTENANCE.

2.1. To use the Cogitate Services, You must register for an Account at 9gbackup.com (“Account”) by completing the Account registration form presented to You on the “sign up” page (“Account Registration”). You must have a valid electronic mail (“E-Mail”) address to have an account with Us. **COGITATE’S PRIMARY MODE OF COMMUNICATION WITH YOU IS THROUGH E-MAIL.** You are solely responsible for maintaining accurate, complete and current contact information. If an E-mail sent to You is returned, Cogitate may suspend Your Account until You provide Us with a current E-mail address.

2.2. You are solely responsible for maintaining the confidentiality of Your user name and password. We shall assume that every login for the Cogitate Services using Your user name and password is You. You shall be solely liable for any and all actions and activities that occur under Your user name and password. If You are a business entity, whether profit or non-profit (“Business Entity”), You shall be solely liable for any and all actions committed by anyone to whom You granted permission to use the Services on Your behalf.

3. **DATA OWNERSHIP.** The credit card holder associated with the Account Registration is the owner of the data (“Data”) stored on the Cogitate Services. For Evaluation Versions, as defined below, of the Software, a credit card may not be required. If there is no credit card associated with the Account Registration, Your email address and correct answers to the security questions shall identify You as the owner of the Data. If Your Account Registration identifies a Business Entity, such Business Entity is the owner of the Data.

## 4. LICENSE AND RESTRICTIONS.

4.1. Subscription Based License. Subject to the terms of this EULA, Cogitate hereby grants You and You hereby accept a limited, non-exclusive, non-sublicensable, non-transferable, revocable license (the “License”) to use the Cogitate Services and any related documentation for (i) internal business purposes if You are a Business Entity, or (ii) for personal uses if You are an individual and solely by the individual identified on the Account Registration. Business entities, whether profit or non-profit, may assign multiple administrators to access, control, manage and use the Business Entity’s Account on behalf of such Business Entity. The Cogitate Services shall be used solely in connection with the backup of Your Data.

4.2. Trial and Evaluation Licenses. Cogitate may give You the opportunity to evaluate the Cogitate Services prior to paying a License Fee, by providing You an option to license a trial, evaluation, or other limited version of the Software (an “Evaluation Version”). For the Evaluation Version, Cogitate hereby grants you and You hereby accept a limited, non-exclusive, non-sublicensable, non-transferable, revocable license (the “Evaluation License”). Your Evaluation License shall automatically terminate upon the earlier of (i) the expiration or cancellation of the evaluation period, (ii) when the Cogitate Service is no longer made available, (iii) when Cogitate cancels Your Evaluation License, or (iv) when Your computer has not accessed the Cogitate server for more than fifteen (15) calendar days. You acknowledge and

agree that Cogitate shall automatically delete any Data stored upon termination of Your Evaluation License for any reason.

4.3. Archival Copies. You may make one (1) copy of the Software and any related documentation for backup or archival purposes. You must reproduce the copyright and all other proprietary notices displayed on the Software and related documentation on such backup or archival copy.

4.4. Restricted Uses. You shall use the Software strictly in accordance with the terms of this EULA and shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt the Software; (b) make any modification, adaptation, improvement, enhancement, translation or derivative work from the Software; (c) violate any applicable laws, rules or regulations in connection with Your access or use of the Software; (d) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Cogitate or its affiliates, partners, suppliers or the licensors of the Software; (e) use the Software for any revenue generating endeavor, commercial enterprise, or other purpose for which it is not designed or intended; (f) make the Software available over a network or other environment permitting access or use by multiple users at the same time, *provided, however*, that Business Entity users may assign multiple administrators; (g) use the Software for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by Cogitate; (h) use any proprietary information or interfaces of Cogitate, its affiliates, or its suppliers or other intellectual property of Cogitate, its affiliates or its suppliers in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with the Software; or (i) store, backup, or distribute child pornography or other files or data including but not limited to copyrighted works, that may be prohibited by applicable laws, rules and regulations.

4.5. Reservation of Rights. Except as provided in Section 4.1, Cogitate retains all right, title and interest in the Software, Services and any related documentation and nothing contained herein shall be construed as the relinquishment on the part of Cogitate of any of Cogitate's ownership interest in the Software, Services and any related documentation.

## **5. LICENSE FEE AND AUTO RENEWAL.**

5.1. License Fee. In consideration of the rights and License granted under this EULA, You shall pay Cogitate a license fee ("License Fee") as provide in Cogitate's Pricing Policy, located at [www.9gbackup.com/legal/pricing-policy.aspx](http://www.9gbackup.com/legal/pricing-policy.aspx). From time to time, Cogitate may increase its License Fees. Cogitate shall use commercially reasonable efforts to give You three (3) months prior written notice of any License Fee increases. From time to time, Cogitate may need to update License Fees due to changes in laws and the general commercial environment and, under such circumstances, Cogitate shall give You notice as soon as commercially reasonable.

5.2. Auto Renewal. Cogitate's Services are subscription based. You may pre-pay as specified in Cogitate's Pricing Policy. The default billing option for each Account is automated billing. You agree that Cogitate shall automatically bill the credit card associated with Your

Account in accordance with Cogitate's Pricing Policy at the then-current renewal fee for Your Account when Your Account is due.

5.3. Removing Your Account from Auto Billing. You may remove Your Account from Auto Billing at any time. You may do this by selecting the appropriate settings in Your Account preferences or notifying Cogitate that You want Your Account removed from Auto Billing. Such notification must be sent from the E-mail address associated with the Account.

**6. SELECTION OF THE APPROPRIATE COGITATE PRODUCT.** Cogitate Services are designed to serve the needs of various types of users, and certain Cogitate Services are designed solely for individual use, while others are designed for use by Business Entities, as determined solely by Cogitate and communicated via Cogitate's Website and marketing materials. If You are using a Cogitate Product for business or network purposes, or to backup server data, You must use the appropriate Cogitate Service. Cogitate may terminate or suspend Your Account to the Cogitate Services if You are using a Cogitate Service that is inappropriate for Your usage.

## **7. INTELLECTUAL PROPERTY RIGHTS.**

7.1. Rights to Cogitate Services. You acknowledge and agree that the Cogitate Services and all copyrights, patents, trademarks, trade secrets and other intellectual property rights associated therewith are, and shall remain, the property of Cogitate, its affiliates, partners, suppliers or licensors. Furthermore, You acknowledge and agree that the source and object code of the Software and the format, directories, queries, algorithms, structure and organization of the Software are the intellectual property and proprietary and confidential information of Cogitate and its affiliates, its partners, licensors and suppliers. Except as expressly provided in this EULA, You are not granted any intellectual property rights in or to the Cogitate Services by implication, estoppel or other legal theory, and all rights in and to the Cogitate Services not expressly granted in this EULA are hereby reserved and retained by Cogitate, its affiliates, partners, suppliers or licensors.

7.2. Third Party Software. The Software may use or include third party software that is subject to open source and third party license terms ("Third Party Software"). You acknowledge and agree that Your right to use such Third Party Software as part of the Software is subject to and governed by the terms and conditions of the open source or third party license applicable to such Third Party Software, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein. In the event of a conflict between the terms of this EULA or the Underlying Agreements and the terms of such open source or third party licenses, the terms of the open source or third party licenses shall control with regard to Your use of the relevant Third Party Software. In no event, shall the Software or components thereof be deemed to be "open source" or "publically available" software. The third party terms and conditions applicable to the third party components of this Software may be found at: [www.9gbackup.com/legal/eula.aspx](http://www.9gbackup.com/legal/eula.aspx). **BY ACCEPTING THIS EULA, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREE TO THESE THIRD PARTY TERMS AND CONDITIONS.**

## **8. ENHANCEMENTS AND FEEDBACK.**

8.1. Enhancements. Cogitate may at any time and from time-to-time in its sole discretion (i) automatically update the Software installed on Your computer without Your prior notice, (ii) upgrade, enhance, change and modify the Software (collectively, with (i) the “Enhancements”), or (iii) discontinue or retire the Cogitate Services or any aspect or feature of the Cogitate Services, including but not limited to file extension support or device support. All Enhancements are subject to this EULA. Cogitate shall use commercially reasonable efforts to provide prior notice of material changes to the Cogitate Services.

8.2. Feedback. You may provide feedback to Cogitate with respect to the Cogitate Services. You understand and agree that Cogitate may use Your feedback for any purpose without obligation to You of any kind. If You provide Feedback, You hereby grant Cogitate and its affiliates an unrestricted, nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute and display such material throughout the world in any media. You further agree that Cogitate is free to use without limitation and without any compensation to You any ideas, concepts, or know-how that You or individuals acting on Your behalf provide to Cogitate. You grant Cogitate the right to use the name you submit in connection with such material. Cogitate retains any and all rights granted in this EULA in and to any Feedback after termination.

8.3. Beta Applications. From time to time Cogitate may designate certain Enhancements and new releases of the Software as “Beta Software.” Beta Software is not ready and is not intended for use in a production environment. Operation of the Beta Software may be unpredictable and lead to erroneous results. You acknowledge and agree that (i) the Beta Software is experimental in nature and has not been fully tested, (ii) the Beta Software may not meet Your requirements or perform as intended, (iii) use of the Beta Software may not be uninterrupted, error free, or free of faults, (iv) Beta Software may contain bugs, faults or errors that may cause damage to Your systems or processes and You agree to use the Beta Software at Your own risk; (v) Your use of the Beta Software is for the sole purpose of evaluating and testing the product and providing feedback to Cogitate, and (vi) You shall inform your employees, staff members and other users regarding the nature of the Beta Software. Your use of the Beta Software is subject to the terms of this EULA.

## **9. TERM AND TERMINATION.**

9.1. Term. This EULA and the License or Evaluation License granted to You hereunder shall commence at the time and on the day You click the “I AGREE” button or install, access, or use the Cogitate Services, whichever is earlier.

9.2. Termination. This EULA and the License or Evaluation License granted to You hereunder shall automatically terminate or expire upon the earlier of (i) non-payment of a License Fee, cancellation of Your Account, or expiration of Your subscription, (ii) Cogitate’s discontinuance of the Cogitate Services, or (iii) Your failure to comply with this EULA or the Underlying Agreements. If any party claims that You have infringed their intellectual property in any manner, Cogitate may immediately terminate Your Account without prior notice to You. COGITATE MAY, IN ITS SOLE AND ABSOLUTE DISCRETION, DENY USE OF AND

ACCESS TO ALL OR ANY PORTION OF THE COGITATE SERVICES, INCLUDING SUSPENDING OR TERMINATING YOUR LICENSE, AN EVALUATION LICENSE, AND YOUR ACCOUNT IF COGITATE DETERMINES THAT YOU ARE USING THE COGITATE SERVICES IN A MANNER INCONSISTENT WITH THIS EULA, THE UNDERLYING AGREEMENTS OR IN VIOLATION OF LAW. Upon the termination of this License or an Evaluation License, You shall cease all use of the Cogitate Services and uninstall the Software.

9.3. Effect of Non-Payment or Termination. Upon any non-payment, termination, or expiration of Your Account (i) the License granted to You herein will automatically and immediately terminate and You shall have no further right to possess the Software or otherwise use the Cogitate Services, (ii) the Software may be disabled by Cogitate without prior notice to You, and (iii) Your Account access shall be disabled. You hereby acknowledge and agree that Cogitate shall automatically delete all of Your Data upon termination of Your Account consistent with this Section 9.

## **10. DISCLAIMER OF WARRANTIES.**

YOU ACKNOWLEDGE AND AGREE THAT THE SOFTWARE, BETA SOFTWARE AND THIRD PARTY SOFTWARE IS PROVIDED ON AN “AS IS,” “AS AVAILABLE” AND “WITH ALL FAULTS” BASIS, AND THAT YOUR USE OF OR RELIANCE UPON THE COGITATE SERVICES, THE BETA SOFTWARE AND ANY THIRD PARTY SOFTWARE ACCESSED THEREBY IS AT YOUR SOLE RISK AND DISCRETION. COGITATE AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTIES REGARDING THE COGITATE SERVICES, THE BETA SOFTWARE AND THIRD PARTY SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHERMORE, COGITATE AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT (I) THE COGITATE SERVICES, THE BETA SOFTWARE OR THIRD PARTY SOFTWARE WILL MEET YOUR REQUIREMENTS; (II) THE COGITATE SERVICES, THE BETA SOFTWARE OR THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, TIMELY, SECURE OR ERROR-FREE; (III) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ACCESSED OR OBTAINED BY YOU THROUGH THE COGITATE SERVICES, THE BETA SOFTWARE OR THIRD PARTY SOFTWARE WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; (IV) ANY ERRORS IN THE SOFTWARE, THE BETA SOFTWARE OR THIRD PARTY SOFTWARE WILL BE CORRECTED; OR (V) THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. YOU UNDERSTAND AND AGREE THAT YOUR INSTALLATION, USE AND ACCESS OF THE COGITATE SERVICES, BETA SOFTWARE AND THIRD PARTY COMPONENTS IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER, SOFTWARE AND THE LOSS OF DATA THAT RESULTS FROM ANY USE THEREOF.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM COGITATE SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTY. FURTHERMORE, YOU ACKNOWLEDGE THAT COGITATE HAS NO OBLIGATION TO CORRECT ANY ERRORS OR OTHERWISE SUPPORT OR MAINTAIN THE COGITATE SERVICES.

THE COGITATE SERVICES ARE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU HEREBY AGREE AND ACKNOWLEDGE THAT COGITATE DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, AND OTHER UNDESIRABLE DATA, OR SOFTWARE, OR (II) UNAUTHORIZED USERS MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB SITES, COMPUTERS, OR NETWORKS. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR DATA AND SYSTEMS.

In certain jurisdictions, the law may not permit the disclaimer of warranties, so the above disclaimer may not apply to You.

#### **11. LIMITATION OF LIABILITY.**

UNDER NO CIRCUMSTANCES SHALL COGITATE OR ITS AFFILIATES, PARTNERS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE THE COGITATE SERVICES, THE BETA SOFTWARE OR ANY THIRD PARTY SOFTWARE, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COGITATE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COGITATE'S AGGREGATE LIABILITY TO YOU (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) SHALL NOT EXCEED THE AGGREGATE LICENSE FEES PAID BY YOU TO COGITATE IN THE TWELVE (12) CALENDAR MONTHS PRECEDING THE ALLEGED DAMAGES. IF THE COGITATE PRODUCTS ARE PROVIDED TO YOU WITHOUT CHARGE, THEN COGITATE SHALL HAVE NO LIABILITY TO YOU WHATSOEVER. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THIS EULA AND THE UNDERLYING AGREEMENTS AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE COGITATE SERVICES.

In certain jurisdictions, the law may not permit the exclusion of incidental or consequential damages, so some of the above limitation may not apply to You.

**12. INDEMNIFICATION.** You shall indemnify, defend and hold harmless Cogitate and its affiliates, partners, suppliers and licensors, and each of their respective officers, directors, agents and employees (the "Indemnified Parties") from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and

other professional advisors) arising out of or in connection with the following: (i) Your access to or use of the Cogitate Services, the Beta Software or Third Party Software; (ii) Your breach of this EULA or the Underlying Agreements; (iii) Your violation of applicable laws, rules and regulations; (iv) Your negligence or willful misconduct; or (v) Your violation of the rights of a third party, including the infringement by You of any intellectual property or misappropriation of any proprietary right or trade secret of any person or entity.

### **13. GOVERNING LAW AND ARBITRATION.**

13.1. Governing Law. All questions concerning the validity, interpretation and performance of this EULA and the Underlying Agreements shall be governed by and decided in accordance with the laws of the State of Michigan, without regard to any conflicts of laws and principles thereof. This EULA, the Underlying Agreements and the transactions contemplated herein are not and will never be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioner on Uniform State Laws) as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction.

#### 13.2. Dispute Resolution by Binding Arbitration.

13.2.1. Any arbitration under this EULA or the Underlying Agreements will take place on an individual basis; class arbitrations and class actions are not permitted. Arbitration is more informal than a lawsuit in court. 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. Arbitrators have the authority to award the same damages and relief that a court can award.

13.2.2. The terms of this Section 13.2 are intended to be interpreted broadly. It shall include but not be limited to: (i) claims arising out of or relating to any aspect of the relationship between the Parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) claims that arose before this or any prior EULA (including, but not limited to, claims relating to advertising); or (iii) claims that may arise after the termination of this EULA or the Underlying Agreements.

13.2.3. You agree that, by entering into this EULA, You and Cogitate are each waiving the right to a trial by jury or to participate in a class action. This EULA evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

13.2.4. A party who intends to seek arbitration must first send to the other a written Notice of Dispute (“Notice”). The Notice shall be provided in accordance with Section **Error! Reference source not found.** of this EULA. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). If Cogitate and You do not reach an agreement to resolve the claim within 30 days after the Notice is received, You or Cogitate may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Cogitate or You shall not be disclosed to the arbitrator



until after the arbitrator determines the amount, if any, to which You or Cogitate is entitled. The Parties may submit the Notice by submitting the AAA Supplementary Procedures for Consumer-Related Disputes Form located on the American Arbitration Association (“AAA”) website at <http://www.adr.org/sp.asp?id=22014>.

13.2.5. The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the AAA, as modified by this EULA, and will be administered by the AAA. The AAA Rules are available online at <http://www.adr.org> or by calling the AAA at 1-800-778-7879. The arbitrator is bound by the terms of this EULA. All issues are for the arbitrator to decide, except issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless the Parties agree otherwise, any arbitration hearings will take place in Washtenaw County, Michigan. If your claim is for \$5,000 or less, Cogitate agrees that You may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If Your claim exceeds \$5,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The payment of these fees will be governed by the AAA rules.

13.2.6. The Parties shall be entitled to attorneys’ fees and expenses as they would be under applicable law.

13.2.7. 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. **YOU AND COGITATE 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.** Further, unless the Parties agree otherwise, the arbitrator may not consolidate more than one person’s 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.

13.2.8. Notwithstanding any provision in this EULA to the contrary, Cogitate agrees that if Cogitate makes any future change to this Section 13.2 (other than a change to the Notice address) during the Term of this EULA, You may reject any such change by sending Cogitate written notice within 30 days of the change consistent with Section 15.2 hereof. By rejecting any future change, You are agreeing that You will arbitrate any dispute between You and Cogitate in accordance with the language of this provision.

#### **14. REPRESENTATIONS AND WARRANTIES.**

14.1. By Cogitate. Cogitate represents and warrants to You that Cogitate has all rights and authority necessary to grant You the Licenses or Evaluation License and the rights granted herein.

14.2. By You. You represent and warrant to Cogitate that You (i) provided complete and accurate information during Account Registration and that You shall keep your contact information current, (ii) if You agreed to this EULA on behalf of an entity, You represent and warrant that You have the full authority to bind that entity to this EULA and Your agreement to this EULA will be treated as the agreement of the entity, (iii) that You have read this EULA and the Underlying Agreements, (iv) that, unless You notified Cogitate, You are not using Cogitate Services to store Data subject to HIPAA, and that (v) You are not engaging in any activities that are inconsistent with this EULA or the Underlying Agreements.

## 15. MISCELLANEOUS

15.1. Export Controls. You understand and acknowledge that the Software may be subject to the export administration regulations of the United States Government relating to the export of technical data and products. This EULA is subject to, and You agree to comply with, any laws, regulations, orders or other restrictions on the export of the Software from the United States which may be imposed by the United States Government or agencies thereof.

15.2. Notices. All notices which are required or permitted to be given pursuant to this EULA shall be in writing and shall be sufficient in all respects if delivered to Cogitate personally, by registered or certified mail, postage prepaid, addressed to a party as indicated below, or to Cogitate or You if delivered by electronic mail (the "E-Mail Notice") and shall be deemed received as of the date such e-mail is sent; *provided, however*, if the sender of the E-Mail Notice receives an e-mail undeliverable notice within twenty-four (24) hours of sending the E-Mail Notice, then such E-Mail Notice shall not be deemed received, via e-mail or otherwise.

If to Cogitate:

Cogitate, Inc.  
Attn: Legal Department  
P. O. Box 980685  
Ypsilanti, Michigan 48198  
president@cogitateinc.com

If to You, to:

To the E-mail address(es) listed in  
the customer account settings.

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered and, as to communications made by United States mail, on the date of receipt. Cogitate may change the above address by giving notice of such change in the manner provided above for giving notice.

15.3. Force Majeure. Neither Party shall be liable for any failure to perform, or delay in performing, any obligations under this EULA or the Underlying Agreements to the extent such failure or delay is due to fire, flood, earthquake, war (declared or undeclared), an occurrence commonly referred to as a terrorist attack and any armed hostilities associated therewith, embargo, legal prohibition, riot, insurrection or any other cause beyond the control of the Party failing to perform or delaying the performance of such obligations. The Party so failing or delaying shall be entitled to a reasonable extension of time for the performance of such obligations.

15.4. Severability. If any provision of this EULA is held to be illegal, invalid or unenforceable in any respect, then the Parties hereto shall substitute such provision with a legal, valid and enforceable provision which attempts to obtain the same result as the provision declared illegal, invalid or unenforceable. The provisions hereof are severable, and in the event any provision of this EULA is held to be illegal, invalid or unenforceable in any respect, then the remaining provisions of this EULA shall remain binding on the Parties.

15.5. Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless expressly set forth in writing and executed by the Party so waiving. The waiver by any Party of a breach of any provision of this EULA shall not operate or be construed as a waiver of any subsequent breach.

15.6. Usage. Wherever any provision of this EULA uses the term “including” (or “includes”), such term shall be deemed to mean “including without limitation” and “including but not limited to” (or “includes without limitation” and “includes but is not limited to”) regardless of whether the words “without limitation” or “but not limited to” actually follow the term “including” (or “includes”).

15.7. Headings. The descriptive headings of the several Sections of this EULA are inserted for convenience only and do not constitute a part of this EULA.

15.8. Survival. The following Sections shall survive termination or expiration of this EULA: 3 (*Data Ownership*), 7 (*Intellectual Property Rights*), 8 (*Enhancements and Feedback*), 10 (*Disclaimer of Warranties*), 11 (*Limitation of Liability*), 12 (*Indemnification*), 13 (*Governing Law and Arbitration*), and 14 (*Representations and Warranties*).