

## TERMS OF SERVICE

Last Revised: August 30, 2018

The following terms and conditions (the "Terms of Service" or "Agreement") constitute an agreement between you, whether as a casual visitor or a registered user ("User", "you" or "your") and gnomi and its affiliates, successors and assigns ("gnomi", "us", "our" or "we") regarding your use of gnomi Site, App and/or Services (all as defined below). gnomi is the owner and operator of the www.gnomi.com website and the our blog at blog.gnomi.com (collectively, the "Site"), gnomi mobile application (the "App"), email notifications or any related applications provided by us (collectively, the "Services"), and all content and features contained in the foregoing. BY ACCESSING THE SITE, ACCESSING OR UTILIZING THE APP, OR UTILIZING ANY OF THE SERVICES AND/OR REGISTERING WITH US, YOU SIGNIFY THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE INCLUDING OUR PRIVACY POLICY, WHICH IS INCORPORATED HEREIN BY REFERENCE.

**THE SECTIONS BELOW TITLED "BINDING ARBITRATION" AND "CLASS ACTION WAIVER" CONTAIN A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER. THEY AFFECT YOUR LEGAL RIGHTS. PLEASE READ THEM.**

### **Modifications to the Terms of Service**

gnomi, in its sole and absolute discretion, may make changes or modifications to the Site, the App, or to this Agreement (including any policies or agreements which are incorporated by reference herein) at any time and without prior notice to you, and such changes or modifications shall be effective immediately upon posting to this Site. You acknowledge and agree that (i) gnomi may notify you of such changes or modifications by posting them to this Site and (ii) your use of this Site, the App or the Services after such changes or modifications have been made (as indicated by the "Last Revised" date at the top of this page) shall constitute your acceptance of this Agreement as last revised. In addition, gnomi may occasionally notify you of upcoming changes or modifications to this Agreement by email. We therefore recommend that you keep your account information including, but not limited to, your email address, current.

### **Eligibility; Registration**

This Site, the App and the Services are available only to Users who can form legally binding contracts under applicable law. By using this Site, the App or the Services, you represent and warrant that you are at least eighteen (18) years of age.

If you are visiting this Site or the App from a country other than the country in which our servers are located, your communications with us may result in the transfer of information (including your registration or Personal information, as described below) across international boundaries. By visiting this Site or the App and communicating electronically with us, you consent to such transfers.

### **Your Use of the Site, the App and the Services**

gnomi's community, like any community, functions best when its Users follow a few simple rules. By accessing and/or using the Site, the App or any Services, you agree to comply with these community guidelines (the "Community Guidelines") and that: Your use of the Site, the App and the Services including any content you submit, will comply with this Agreement and all applicable local, state, national and international laws, rules and regulations; you will not impersonate another User or entity or falsely state or otherwise misrepresent your affiliation with a person or entity, nor will you collect or harvest (or permit anyone else to collect or harvest) any User Content (as defined below) or any non-public or personally identifiable information about another User or any other person or entity without their express prior written consent; you will not use this Site, the App or the Services in a manner (as determined by gnomi in its sole and absolute discretion) that is illegal, infringing, defamatory, harassing, or abusive, that violates the privacy or publicity rights of another User or any other third party, or that is otherwise objectionable; you will not use this Site, the App or the Services for hate speech, hate crimes or violence; You will not use this Site, the App or the Services to send spam or other unsolicited bulk email, for computer or network hacking or cracking, or to transmit any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality or security of the Site, the App or the Services; you will not copy or distribute in any medium any part of the Site, the App or the Services, except where expressly authorized by gnomi; you will not access gnomi Content or User Content (as those terms are defined below) through any technology or means other than through this Site or App itself, or as gnomi may designate; you will not use this Site, the App or the Services, including any of gnomi's related technologies, for any commercial use without gnomi's express prior written consent; and you will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our technical infrastructure.

gnomi reserves the right to modify, change, or discontinue any aspect of this Site, the App or the Services at any time.

## Accessing and Downloading the App from iTunes

The following terms apply to any downloads of the App from Apple. These terms are in addition to all other terms contained in this Agreement:

- You acknowledge and agree that: (i) this Agreement is concluded between you and gnomi only, and not Apple; and (ii) gnomi, not Apple, is solely responsible for the App and content thereof. Your use of the App must comply with the App Store Terms of Use. - You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App.

- In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App to you. As between gnomi and Apple, any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure to conform to any warranty will be the sole responsibility of gnomi.

- You acknowledge that, as between gnomi and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- You acknowledge that, in the event of any third-party claim that the App or your possession and use of the App infringes that third party's intellectual property rights, as between gnomi and Apple, gnomi, not Apple, will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by this Agreement.

- You represent and warrant that: (i) you are not located in a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. government list of prohibited or restricted parties.

- You acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this Agreement as related to your license of the App, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as related to your license of the App against you as a third party beneficiary thereof.

- Without limiting any other terms of this Agreement, you must comply with all applicable third-party terms of agreement when using the App.

### **Sign-in Name; Password, Unique Identifiers**

You will be asked to register in order to use the App or certain Services. When required to register to use the App or if required to register for one of our Services, you must create an account, including a sign-in name ("Sign-In Name"), a password ("Password"), and perhaps certain additional information that will assist in authenticating your identity when you log-in in the future ("Unique Identifiers"). When creating your account, you agree to provide accurate, current and complete information about yourself and to promptly update this information to maintain its accuracy. Each Sign-In Name and corresponding Password can be used by only one user. You are solely responsible for the confidentiality and use of any information you provide, as well as for any use, misuse, or communications entered through the Site, the App or the Services using such information. You will promptly inform us of any need to deactivate a Password or Sign-In Name, or change any Unique Identifier. gnomi will not be liable for any loss or damage caused by any unauthorized use of your registration information. gnomi has the right to delete, change, suspend or terminate your registration, your Sign-In Name and Password, and/or this Agreement in our sole discretion at any time and for any reason, and to refuse any and all current or future use of the App or the Services if it suspects that such information is inaccurate or incomplete.

### **Beta Features**

From time to time, gnomi may invite you to try pre-release services, products, features, or functionalities that are made available to you to use and evaluate ("Beta Features"). You may accept or decline any such trial in your sole discretion. An important part of this beta process is getting real-world testing of the Beta Features before a general release. If you agree to participate in a beta trial, the following additional terms and conditions will apply:

- You acknowledge that Beta Features are for evaluation purposes only and not for production use, are not considered part of the Services under this Agreement, are not supported, are provided "AS IS" with no warranties of any kind, and may be subject to additional terms.

- Unless otherwise stated, any Beta Feature trial period will expire upon the date that a version of the Beta Feature becomes generally available or we elect to discontinue such Beta Feature.

- We may discontinue Beta Features at any time in our sole discretion and may never make them generally available.

- WE WILL HAVE NO LIABILITY FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH A BETA FEATURE, AND YOU USE ANY BETA FEATURE AT YOUR OWN RISK.

- You agree that we shall be free to use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to you.

## **Intellectual Property**

The content on this Site, the App and the Services as well as any content in the Beta Features, including without limitation the software, scripts, source code, API, graphics, photos, sounds, music, videos and interactive features and the trademarks, service marks and logos contained therein ("gnomi Content"), are owned by or licensed to gnomi in perpetuity, and are subject to copyright, trademark, and/or patent protection in the United States and foreign countries, and other intellectual property rights under United States and foreign laws. gnomi Content is provided to you "as is", "as available" and "with all faults" for your information and personal, non-commercial use only and may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any purposes whatsoever without the express prior written consent of gnomi. No right or license under any copyright, trademark, patent, or other proprietary right or license is granted by this Agreement. gnomi reserves all rights not expressly granted in and to gnomi Content, this Site, the App and the Services, and this Agreement does not transfer ownership of any of these rights.

If you violate any part of this Agreement, your permission to access and/or use gnomi Content and the Site, the App or the Services automatically terminates and you must immediately destroy any copies you have made of gnomi Content.

The trademarks, service marks, and logos of gnomi ("gnomi Trademarks") used and displayed on the Site, the App, the Services or on any Beta Features are registered and unregistered trademarks or service marks of gnomi. Other company, product, and service names located on the Site, the App, the Services or any Beta Features may be trademarks or service marks owned by others (the "Third-Party Trademarks," and, collectively with gnomi Trademarks, the "Trademarks"). Nothing on the Site, the App, the Services or any Beta Features should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a

link is approved in advance by us in writing. All goodwill generated from the use of gnomi Trademarks inures to our benefit.

The Site, the App, the Services and any Beta Features have been specially designed to present gnomi Content in a unique format and appearance. We are concerned about the integrity of gnomi Content when it is viewed in a setting created by a third party that includes advertising or other materials that we have not authorized to be displayed with our content. Elements of the Site, the App, the Services and the Beta Features are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including, but not limited to, the use of framing or mirrors. Neither you nor any third party shall make use of gnomi Content in any manner that constitutes an infringement of our rights, including copyright, or that has not been authorized by us.

### **Our Use of User Content**

Some of the features of this Site, the App or the Services, or on any Beta Features, may allow Users to view, post, publish or share their ideas, opinions, preferences or feedback (e.g., through a "like" or "comment" function) relating to gnomi's news articles or current events ("On-Site User Content"). We may also make available interactive services through third-party websites and third party social media platforms ("Third Party Platforms") (e.g., gnomi-designated hashtags, including #gnomislantId, and comment or posting sections on gnomi-related pages hosted on third party social media platforms) pursuant to which Users can post associated content ("Off-Site User Content," together with On-Site User Content, "User Content"). By posting or publishing User Content to this Site, the App or to the Services, or on any Beta Features or to Third Party Platforms, you represent and warrant to gnomi that: (i) you have all necessary rights to distribute User Content, either because you are the sole author and owner of the User Content and have the right to distribute the same, or because you have the appropriate distribution rights, licenses, consents, and/or permissions to use, in writing, from the copyright or other owner of the User Content; and (ii) you do not violate the rights of any third party. You shall be solely responsible for any and all of your User Content and the consequences of, and requirements for, distributing it.

gnomi has no obligation, either express or implied, to treat your User Content as confidential, to develop or use your User Content and no compensation is due to you or to anyone else for any intentional or unintentional use of your User Content. You acknowledge and agree that gnomi may be working on the same or similar content, it may already know of such content

from other sources, it may simply wish to develop this (or similar) content on its own, or it may have taken / will take some other action.

If you post or publish your User Content to this Site, the App, any Beta Features or to Third Party Platforms, you authorize gnomi to use the intellectual property and other proprietary rights in and to your User Content to enable inclusion and use of the User Content in the manner contemplated by this Site, the App, any Beta Features, the Third Party Platforms and this Agreement. Accordingly, you hereby grant gnomi a worldwide, non-exclusive, royalty-free, sublicensable (through multiple tiers), and transferable license to use, reproduce, distribute, prepare derivative works of, combine with other works, display, and perform your User Content in connection with this Site, the App, the Third Party Platforms and gnomi's business, including without limitation for any Beta Features, promoting and redistributing all or part of this Site or the App in any media formats and through any media channels without restrictions of any kind and without payment or other consideration of any kind, or permission or notification, to you or any third party.

### **Our Monitoring of User Content**

gnomi reserves the right, but has no obligation, to pre-screen User Content and decide whether any item of User Content is appropriate and/or complies with this Agreement. gnomi may remove any item of User Content (in the case of Off-Site User Content, remove any repost or publication of such Off-Site User Content from a Third Party Platform, the Site or the App) and/or terminate a User's access to this Site, the App or the Services for posting or publishing any material in violation of this Agreement, or for otherwise violating this Agreement (as determined by gnomi in its sole and absolute discretion), at any time and without prior notice. If gnomi terminates your access to this Site, the App or the Services gnomi may, in its sole and absolute discretion, remove and destroy any data and files stored by you on its servers.

### **Copyright Infringement**

gnomi has adopted the following general policy toward copyright infringement in accordance with the Digital Millennium Copyright Act ("DMCA"). It is gnomi's policy to (a) block access to or remove material that it believes in good faith to be copyrighted material that has been illegally copied and distributed by any of our advertisers, affiliates, content providers or Users; and (b) remove and discontinue service to repeat offenders.

Written Notification. If you believe that your content has been copied in a way that constitutes copyright infringement, please notify our Copyright Agent by emailing us

at [movers@gnomi.com](mailto:movers@gnomi.com). gnomi will respond to notices of alleged infringement regarding third party material sent pursuant to and in accordance with the DMCA, which may include gnomi removing or disabling access to Third Party material claimed to be the subject of infringement or other activity. All notices sent to gnomi regarding matters other than informing gnomi that a party's copyrighted material may have been infringed as a result of third party materials will not receive a response through this process. In order to be effective, your infringement notification must include the following:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single website are covered by a single notification, a representative list of such works at that website;
- Identification of the material (i.e., the third party materials) that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit gnomi to locate the material;
- Information reasonably sufficient to permit gnomi to contact the complaining party, such as an address, telephone number, and if available, an electronic mail address at which the complaining party may be contacted;
- A statement, as follows: "I have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law"; and- A statement, as follows: "The information in this notification is accurate, and under penalty of perjury, I swear that I am the copyright owner or that I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."

Counter Notification. If you believe that your work has been removed or disabled by mistake or misidentification, please notify our Copyright Agent by emailing us at [Movers@gnomi.com](mailto:Movers@gnomi.com). To be effective, a Counter Notification must be a written communication that includes substantially the following:

- A physical or electronic signature of the User;



- 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 to it was disabled;
- A statement, as follows: "I swear under penalty of perjury that it is my good faith belief that the material identified above was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled"; and
- The User's name, address, and telephone number, and a statement that the User consents to the jurisdiction of Federal District Court for the judicial district in which the User's address is located, or if the User's address is outside of the United States, for any judicial district in which gnomi may be found, and that the User will accept service of process from the person who provided notification or an agent of such person.

### **Links to Third-Party Websites**

This Site, the App and the Services may contain links to third-party websites that are not owned or controlled by gnomi. These links are provided solely as a convenience to you and do not constitute an endorsement by gnomi of the content on such websites nor of the business practices of those operating those websites. gnomi has no control over and assumes no responsibility for the content, terms and conditions, privacy policies, or practices of any third-party websites. In addition, gnomi does not censor or edit the content of any third-party websites. By using this Site, the App or the Services, you expressly release gnomi from any and all liability arising from your use of any third-party website. Accordingly, gnomi encourages you to be aware when you leave this Site, the App or the Services and to review the terms and conditions, privacy policies, and other governing documents of each other website that you may visit.

### **Fees and Payment**

As gnomi grows and develops new products and features, we may charge fees in connection with certain Services or offerings, including Beta Features ("Fees"). We will notify you of any Fees associated with such Services or offerings so that you may choose whether to purchase or subscribe to the new Services, product, feature or Beta Feature. Fees and any applicable taxes will be due and payable as set forth below. gnomi may increase the Fees by providing you with written notice of such increase.

- Payment by Credit or Debit Card. In the event you choose to purchase any product or Services for which gnomi charges a Fee, you authorize gnomi to charge your credit card, debit

card or other payment instrument for the Fee and any applicable taxes. You further authorize gnomi to use a third party to process payments and hereby consent to the disclosure of your Billing Information to such third party.

- Payment Information. Once you provide us with your Billing Information, you agree to keep your contact information, Billing Information, and credit card information (where applicable) up to date. Changes may be made on your billing page connected to the Services or Beta Feature.

Non-Cancelable and Non-Refundable. All Fees and applicable taxes payable under this Agreement and all payments made are non-refundable.

### **Monthly Subscriptions**

We may offer the App or some of our Services on a subscription basis. By subscribing to the App or to any such Services, you authorize us to charge your credit card or debit card an initial payment at the time of signing up, and a monthly recurring payment which will take place on the next billing day of your billing cycle. **IT IS IMPORTANT TO NOTE THAT WHEN YOU SIGN UP FOR A MONTHLY SUBSCRIPTION, YOUR SUBSCRIPTION WILL AUTOMATICALLY RENEW UNTIL YOU CANCEL IT. YOU MAY CANCEL AT ANY TIME BY FOLLOWING THE INSTRUCTIONS BELOW OR ON OUR SITE OR APP, AND THE CANCELLATION WILL TAKE EFFECT AT THE EXPIRATION OF THE THEN-CURRENT TERM.** You may cancel your subscription at any time by visiting your iTunes or Google play account and cancelling your subscription there. You are responsible for any recurring charges that take place prior to cancellation. gnomi reserves the right to move your next billing day at any time without any further authorization from you. We may modify the fees at any time by posting such modification on our website, and any such modification shall go into effect thirty (30) days after it is so posted.

### **Indemnity**

You agree to indemnify and hold harmless gnomi, its and affiliates, and their directors, officers, managers, employees, shareholders, agents, and licensors, from and against all claims, demands, disputes, losses, expenses, damages, and costs, including reasonable attorneys' fees, arising out of or in relation to your breach of these Terms or your misuse of the Site, the App, the Services, gnomi Content or any Beta Feature. gnomi reserves the right to assume the exclusive defense of any claim for which we are entitled to indemnification under this Section. In such event, you shall provide us with such cooperation as is reasonably requested by us.

### **Disclaimer of Warranties and Limitation of Liability**

THE SITE, THE APP, THE SERVICES, ALL BETA FEATURES AND ALL GNOMI CONTENT ARE AVAILABLE "AS IS." GNOMI DOES NOT WARRANT THAT THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES OR ANY GNOMI CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE. THERE MAY BE DELAYS, OMISSIONS, INTERRUPTIONS, AND INACCURACIES IN THE NEWS, INFORMATION, OR OTHER MATERIALS AVAILABLE THROUGH THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES OR ANY GNOMI CONTENT.

WE DISCLAIM ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE WITH RESPECT TO THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES, ANY GNOMI CONTENT OR ANY INFORMATION OR GOODS THAT ARE AVAILABLE OR ADVERTISED OR SOLD THROUGH THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES OR ANY GNOMI CONTENT. WE DO NOT PROVIDE OR AUTHORIZE THE PROVISION OF MEDICAL, LEGAL, OR OTHER PROFESSIONAL ADVICE THROUGH THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES OR ANY GNOMI CONTENT, AND SO WE DISCLAIM ANY RESPONSIBILITY FOR THE ACCURACY OR RELIABILITY OF MEDICAL, LEGAL, OR OTHER PROFESSIONAL INFORMATION THAT IS CONTAINED WITHIN THE SITE, THE APP, THE SERVICES, ANY BETA FEATURES OR ANY GNOMI CONTENT; RATHER THAN RELYING ON THIS INFORMATION, YOU SHOULD SEEK ADVICE FROM A QUALIFIED PROFESSIONAL. WE DO NOT MAKE ANY REPRESENTATIONS REGARDING, NOR DO WE ENDORSE THE ACCURACY, COMPLETENESS, TIMELINESS, OR RELIABILITY OF ANY ADVICE, OPINION, STATEMENT, OR OTHER MATERIAL OR DATABASE DISPLAYED, UPLOADED, OR DISTRIBUTED IN ANY BETA FEATURES, THE SERVICES, THE SITE, THE APP OR AVAILABLE THROUGH LINKS IN THE FOREGOING. WE RESERVE THE RIGHT TO CORRECT ANY ERRORS OR OMISSIONS IN THE SITE, THE APP, THE SERVICES AND ANY BETA FEATURES. WE DO NOT GUARANTEE OR WARRANT THAT THE BETA FEATURES, THE SERVICES, THE SITE, THE APP, OR MATERIALS THAT MAY BE DOWNLOADED FROM THE FOREGOING DO NOT CONTAIN VIRUSES, WORMS, "TROJAN HORSES," OR OTHER DESTRUCTIVE MATERIALS. WE ARE NOT LIABLE FOR ANY DAMAGES OR HARM ATTRIBUTABLE TO SUCH FEATURES.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS, gnomi, its affiliates, and their directors, officers, managers, employees, shareholders, agents, and licensors: (I) SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE PLATFORM OR THE CONTENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES; OR (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SITE, THE APP, THE SERVICES, ANY BETA FEATURE OR ANY GNOMI CONTENT SHALL BE LIMITED TO THE MONIES YOU HAVE PAID US IN CONNECTION WITH YOUR USE OF THE FOREGOING DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

### **Limitation of Liability in Certain States**

CERTAIN STATE LAWS IN THE UNITED STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE LIMITATIONS ON WARRANTIES MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

### **Binding Arbitration**

Except for disputes arising from an alleged violation of intellectual property rights or breach of confidentiality, for which the injured party may suffer irreparable harm and may seek a restraining order, preliminary injunctive relief, an injunction, specific performance or other equitable relief and/or legal remedies, and actions to enforce the decisions of the arbitrators, for which action may be taken in any court of competent jurisdiction, in the County of Minnesota, in the State of Minnesota, and you hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to) to waive the right to trial by jury in any such action or proceeding that takes place relating to or arising out of this Agreement, all disputes arising out of or related to this Agreement, including the scope, the construction or application of this Agreement, shall be resolved by binding arbitration governed by the Federal Arbitration Act and in accordance with the commercial arbitration rules of the Judicial Arbitration and Mediation Services ("JAMS") then in force. NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH DISPUTE IN COURT OR TO HAVE A JURY TRIAL. DISCOVERY AND APPEAL RIGHTS MAY ALSO BE LIMITED IN ARBITRATION. The arbitration hearings and all meetings pursuant to this section shall be held in Ramsey County, in the State of Minnesota. If the parties cannot agree upon a single arbitrator within twenty (20) calendar days after demand by either of them, each party shall select one arbitrator knowledgeable about Internet commerce in Minnesota, and notify the other of its selection, and such two arbitrators shall select a third from a list of arbitrators (with knowledge of the Internet industry) qualified by JAMS in Minnesota. If this procedure for selecting arbitrators fails, then a neutral arbitrator based in Minnesota with knowledge of Internet commerce in Minnesota State shall be selected by JAMS to resolve the dispute. The arbitrator(s) shall conduct a hearing within sixty (60) days after their selection. A majority of the arbitrators (if there is more than one pursuant to this clause) shall determine the decision/award, which shall be rendered within ten

(10) days after the completion of the hearing. The decision of the arbitrator(s) shall be final and binding upon the parties both as to law and to fact, and shall not be appealable to any court in any jurisdiction. The parties shall share the expenses of the arbitrators equally. Nothing in any indemnification provision hereunder shall be construed as having any bearing on the award of attorneys' fees or arbitrators' fees under this section.

### **Class Action Waiver**

You agree that any arbitration or proceeding shall be limited to the dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any dispute to be brought in a purported representative capacity on behalf of the general public or any other persons. YOU AGREE THAT Any controversy or claim shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claim or controversy of any other party, unless agreed to by gnomi at ITS sole discretion.

### **Miscellaneous**

Nothing in this Agreement shall be deemed to confer any third-party rights or benefits. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflict of laws principles. The titles and headings of this Agreement are for convenience and ease of reference only and shall not be utilized in any way to construe or interpret the agreement of the parties as otherwise set forth herein. This section and the sections entitled Beta Features, Intellectual Property, Indemnity, Disclaimer of Warranties and Limitation of Liability, Binding Arbitration and Class Action Waiver shall survive the termination of this Agreement. Each covenant and agreement in this Agreement shall be construed for all purposes to be a separate and independent covenant or agreement. Neither the course of conduct between parties nor trade practice shall act to modify any provision of this Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter, and supersedes all existing agreements and all other oral, written or other communication between the parties concerning its subject matter.

### **Contact Information**

If you have any questions about this Agreement, please contact us via email at [movers@gnomi.com](mailto:movers@gnomi.com) or regular mail at the following address:

**gnomi**

**Attn: Legal**

2499 Rice St. Suite 135

Roseville, MN 55113

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