

HMEEx ASSISTANT LLC

TERMS OF SERVICE

Last updated: April 18, 2022

These terms of service (“Terms”) are a binding contract between you and HMEEx Assistant LLC and our affiliates and subsidiaries (“HMEEx”, “us”, or “we”) and, together with our [Privacy Policy](#), govern your use of our software solutions for building and fire officials, building owners, and designers to assist with classifying hazardous materials and comparing hazardous material inventory quantities with quantity limits established by the International Fire Code and International Building Code available through <https://hmexassistant.com>, the (“Site”), or the HMEEx Assistant application available at <https://hmexassistant.powerappsportals.com/> (“Application”), as well as other digital properties and channels we own or operate (collectively, with the Site and App, the “Services”). Any terms we use in these Terms without defining them have the definitions given to them in the Privacy Policy. Please note that additional, separate terms may apply to our Services, each of which will be considered to form part of these Terms. These Terms shall substitute for and replace all prior terms and conditions that may have governed your use of the Services.

Need support from HMEEx now? Contact us at support@hmexassistant.com.

THESE TERMS INCLUDE A CLASS ACTION WAIVER AND AN ARBITRATION PROVISION THAT GOVERNS ANY DISPUTES BETWEEN YOU AND HMEEx.

1. ACCEPTANCE

By visiting the Site or using our other Services, you agree to be unconditionally bound by these Terms. To use the Services, you must: (a) be at least 18 years old; (b) reside in the United States including its territories and commonwealths or a Member State of the European Union; and (c) agree to be unconditionally bound by these Terms. You must be of legal age and capacity to form a binding contract to accept the Terms. If you are using or accessing the Services on behalf of a company or other entity (“Entity”), you represent, agree, and warrant that you are authorized to act on behalf of the Entity and to bind such Entity to these Terms. You accept the Terms by clicking to accept or agree to the Terms where this option is made available to you over the phone or chat or in any agreement, electronic form, or the user interface for any Service we offer, or by actually visiting the Site or using another Service. ACCEPTANCE OF THESE TERMS IS REQUIRED FOR USE OF HMEEx SERVICES AND ANY USE OF HMEEx SERVICES SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS. These Terms will remain in effect while you use our Services. If you do not agree with any of these Terms, do not access the Site or use our other Services. You acknowledge and agree that we may make changes to the Services or these Terms at any time and that you will be bound by such changes if you continue to use our Services.

2. SERVICES

The Services are designed for any user type, but are geared to help fire and building officials, architects and design engineers, and consulting firms, facility owners and operators, and individual consultants. The Services are available to Authorized Users (defined below) through the Site or our Application pursuant to these Terms. To use the Services, you must first register with us, create an account, and subscribe to an available Subscription Plan (see below). Some Services may not be available to all users. We will explain which Services are available to you during the sign-up process. THE SERVICES MAY ONLY BE USED BY AUTHORIZED USERS LOCATED IN THE UNITED STATES AND ITS TERRITORIES. FOR CLARITY, IT IS STRICTLY

PROHIBITED TO ACCESS OR USE THE SERVICES WHILE PHYSICALLY LOCATED IN THE EUROPEAN UNION OR OTHER NON-U.S. JURISDICTIONS.

3. Subscription Plans

To use the Services, you must purchase one of the following annual Subscription Plans:

Subscription Plan	No. of licenses (users)
Assistant Governmental	1-5
	6-10
	11+
Assistant	1-10
	11+
Advanced	1-5
	6-10
	11+

Subscription Plans and associated license numbers, costs, fees, and payments are subject to change in our discretion at any time with notice to you. Current Subscription Plan offerings and pricing will be listed on the Site.

- a. **Assistant and Assistant-Governmental Subscription Plan:** The Assistant-Governmental Subscription Plan includes, without limitation and subject to change, the following:
 - i. Access to the chemical database search; and
 - ii. Access chemical lookup feature which provides the following for each of the 3,400 chemicals: (1) physical, chemical, and toxicological properties; (2) fire and building code hazard classifications; (3) regulatory program information related to reporting quantities and threshold quantities for EPCRA, SARA Title III, OSHA PSM, and Clean Air Act, as well as shipping names, hazard classes and labels under US DOT 49 CFR; (4) the ability to screen for materials incompatible with the chemical selected.
- b. **Advanced Subscription Plan:** The Advanced Subscription Plan includes, without limitation and subject to change, the following:
 - i. Access to the chemical database search;
 - ii. Access to the chemical lookup feature;
 - iii. Access to additional features that allow the User to upload chemical inventories; and
 - iv. Evaluation of each inventory chemical and assign hazard classifications if the chemical is a match to a chemical found in our database (note that

inventory chemicals that are not a match must be hand classified by you). HMEEx then utilizes the system-classified and customer-classified chemicals and the quantities, locations, and protection features specified by you to evaluate whether the chemical quantities are above maximum quantities allowed outside of buildings or spaces classified as hazardous occupancies or within hazardous occupancies when so specified, under the International Fire and Building Codes.

4. LEGAL COMPLIANCE

You hereby represent and warrant that you and your Authorized Users will use the Services in compliance with all applicable laws and regulations, including without limitation International Fire and Building Codes, labor and employment laws and regulations, construction standards, and all other laws, regulations, and orders applicable to your industry and the jurisdiction from which you access or use the Services. You agree that HMEEx is not and will not be responsible for compliance with any laws applicable to you and your industry that are not generally applicable to HMEEx in its provision of the Services.

5. LICENSE GRANT

When you subscribe to our Services, HMEEx automatically grants you a non-exclusive, non-transferable, non-sublicensable, limited, revocable right to use the Services for your own personal, internal business, and non-commercial purposes (the “License”), subject to the terms and conditions set forth herein. Neither the License nor any other provision hereof shall grant any rights in the Services or other intellectual property rights except the limited License of use set out in this section. You agree not to: (a) rent, retransmit, disclose, publish, sell, assign, lease, sublicense, market, or transfer the Services or any portion thereof (including the Content) or use it in any manner that is prohibited or not expressly authorized by these Terms; (b) copy, reverse engineer, translate, port, modify, or make derivative works of any portion of the Services; (c) violate or attempt to violate the security features of the Services; (d) use any device, software, or routine to interfere or try to interfere with the proper working of the Services or any activity being conducted on via the Services; or (e) use or try to use any device or mechanism (including browsers, spiders, robots, avatars, or intelligent agents) to navigate or search the Services other than the search engine or search agents that we make available via the Services and the generally available third-party web browsers. The License term shall be for the term of these Terms only.

6. AUTHORIZED USERS

Each unique person given access to the Services through your subscription is your “Authorized User.” Each Authorized User may have simultaneous access to any number of instances of the customer’s subscribed-to services at one time. You must obtain a separate, dedicated entitlement under your License to use the Services for each of your Authorized Users, whether they access the Services directly or indirectly through any means. An entitlement to your License for a given Authorized User may not be shared with others; however, you may transfer an existing entitlement from an Authorized User to a new, replacement Authorized User if there is a permanent change in personnel (e.g., departure from the company or retirement) or other exogenous and permanent reason for such transfer. For clarity, the transfer of an entitlement to your License may not be used for non-permanent transfers, such as holiday, sick leave, etc. To access the Services, each Authorized User must provide a unique email address with a named user alias, and not a generic alias, that HMEEx will use to provide such Authorized User with access to the Services. HMEEx reserves the right to reject an email address or other login that

does not meet this standard or suspend the underlying account as necessary to enforce these Terms.

7. RESPONSIBILITY FOR AUTHORIZED USERS

You will: (a) be responsible for compliance with these Terms by each of your Authorized Users; (b) be responsible for the accuracy of your account, and the accuracy and legality of any User Content input to the Site or App by your Authorized Users; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Site or App, and notify HMEEx promptly of any unauthorized access or use; and (d) use the Services only in accordance with these Terms and applicable law. Any use of the Services in violation of the foregoing by you or your Authorized Users that in our judgment threatens the security, integrity, or availability of the Services may result in immediate termination of your subscription.

8. BILLING AND PAYMENT

By subscribing to our Services, you acknowledge and agree to the billing and payment provisions described herein. You are responsible for paying the fees associated with the Subscription Plan you selected, as well as any and all applicable sales and use taxes for the purchase of your Subscription Plan based on the address that you provide when you subscribe. All fees are quoted in United States dollars.

You may change or cancel your subscription by contacting support@hmexassistant.com. Your change is effective immediately and applies to the entire annual billing period during which you contacted us. Your cancellation is effective at the end of the then-current annual billing period.

All payments are processed through a secure third-party payments gateway or via check, electronic wire transfer, or ACH transfer. By initiating payment through our payment processor, you agree that we may charge your credit or debit card or withdraw amounts from your designated account at your depository institution or charge any other payment method that you have on file with the fees due hereunder, any sales and use taxes and any late fees or interest (as described below). You represent and warrant that the payment information you provide to us is correct and accurate and you are using a form of payment that you are legally authorized to use for this purpose. HMEEx will not be liable or responsible for any delay, failure, or interruption of payments due to inaccurate or missing information. You agree that you are solely liable for any payment or credit card fraud, abuse, or unauthorized use by you or others.

If you do not pay on time or if your payment method is declined for any reason, we reserve the right to either suspend or terminate your access to the Services. In addition, if any payment is not received within 30 days after the due date, then we may charge a late fee of \$10 and we may assess interest at the rate of 1.5% of the outstanding balance per month (18% per year), or the maximum rate permitted by law, whichever is lower, from 30 days after the due date until the date paid. If your unpaid fees are referred to an attorney or collections agency, you shall pay all reasonable attorney's fees or collections agency fees.

9. TERM AND CANCELLATION

If you subscribe to the Services, the duration of your Subscription Plan is 12 months. HMEEx may in its sole discretion change your contract terms or cancel the contract by giving 30 days' notice in writing or as otherwise provided in these Terms. You acknowledge that HMEEx's obligations to you under the contract begin anew with each renewal, and that HMEEx owes you no obligations beyond each successive 12-month contract period.

We may terminate these Terms and your access to the Services immediately upon giving notice to you if: (a) we suspect that a request from you or your Authorized User interacting with us through any means constitutes or otherwise relates to fraudulent or otherwise illegal activity or to a sexual or otherwise potentially illicit encounter or (b) you breach any of these Terms. In addition, we may terminate your subscription for any other reason or for no reason by giving you 30 days' notice. If you cancel your subscription or otherwise terminate your agreement with HMEEx, we will retain any fees you have paid to us. HMEEx does not accept or process full or partial refunds for any Subscription Plan purchase. If you have questions, please email us at support@hmexassistant.com.

10. OUR APPLICATION

By downloading, installing or using our Application, creating an account on the Application, or submitting information via the Application, you acknowledge HMEEx's Privacy Policy and you consent to the collection and use of information as described therein. The Application is only available to subscribing customers as part of our Services. We reserve the right to amend or withdraw the Application at any time and for any reason. If you do not agree with our policies and practices, you should not download or use the Application. To use the Application, you must have a compatible mobile telephone or handheld device, Internet access (if required by the App), and the necessary minimum specifications ("Software Requirements") to use the Application. From time to time, we may post modified or additional Software Requirements on the Site. The Application software may be upgraded from time to time to add support for new functions and services. You acknowledge that the terms of agreement with your respective internet service provider will continue to apply when using the Application, and you accept responsibility for any related charges that arise. If you are not the bill payer for the mobile telephone or handheld device being used to access the App, you will be assumed to have received permission from the bill payer for using the App.

11. SERVICE ACCESS

HMEEx will use commercially reasonable efforts to maintain availability of the Services during your subscribed-to service times. You agree and understand that there will be times when the Services will not be available, such as scheduled maintenance times; outages; emergency maintenance; unavailability caused by software, hardware, other customers, or their Authorized Users; and causes beyond our reasonable control. HMEEx will make commercially reasonable efforts to notify you of planned downtime and unavailability of the Services. HMEEx is not liable for any delays, interruptions, or other transmission errors resulting from any lack of Service, whether or not the cause is mentioned in this paragraph, or any lack of Service caused by your device or your internet or wireless service provider.

12. PRIVACY POLICY

You acknowledge that you have read and understand our Privacy Policy. You may review our Privacy Policy at any time at <https://hmexassistant.com/about-us/privacy-policy/>.

13. COMMUNICATIONS

HMEEx may use your contact information to communicate with you about your use of our Services. For example, we may send you service announcements or administrative communications by email, phone, mail, or other means for the limited purpose of providing you with the Services you request. You understand that we must send service announcements and administrative messages to provide you with the Services, and therefore you will not be able to opt out of receiving these communications.

If you consent, we may also send you marketing communications by email, mail, or other means in compliance with applicable law. As part of our policy to provide you total privacy, we provide you the option of opting out from receiving marketing communications from us.

14. ACCEPTABLE USE

By using the Services or features thereof, you represent and warrant that (a) any information you submit to us is truthful and accurate; (b) you will maintain the accuracy of that information; and (c) your use of the Services and its features does not violate any applicable law, rule, or regulation. You agree to use the Services only in compliance with our Data Security Statement (a copy to be made available to you upon your reasonable request) and applicable law. You may not use the Services for any commercial purpose (except when transacting business with HMEEx) or for any unlawful or wrongful purpose. You agree not to rent, retransmit, disclose, publish, sell, assign, lease, sublicense, market or transfer the Services or any portion of it, or use it in any manner not expressly authorized by these Terms. Tampering with the Services, conducting fraudulent activities via the Services, and all other illegal activities are prohibited and may subject a user to legal action and/or termination of your access to the Services.

15. USE RESTRICTIONS

Accessing the Services does not authorize you to use the Services or its features in any manner other than specifically authorized by these Terms. You may not use the Services for any purpose not expressly stated in these Terms, including in any way that might disparage HMEEx. The permissions described herein will terminate automatically if you breach any of these Terms. Any other use of the Services, including reproduction for purposes other than as noted above, without the prior written permission of HMEEx is strictly prohibited. You are strictly prohibited from violating or trying to violate the security features of the Services, such as by:

- a. Accessing data not intended for you or logging onto a server or an account that you are not authorized to access.
- b. Attempting to probe, scan, or test the vulnerability of a system or network, or to breach security or authentication measures unless we expressly authorize that you do so in writing.
- c. Attempting to interfere with service to any user, host or network, such as by means of submitting a virus to the Services, overloading, "flooding," "spamming," "mail bombing," or "crashing."
- d. Sending unsolicited email, including promotions and/or advertising of products or services forging any TCP/IP packet header or any part of the header information in any email or newsgroup posting.

You hereby agree not to use any device, software, or routine to interfere or try to interfere with the proper working of, or any activity being conducted on, the Services. You further agree not to use or try to use any engine, software, tool, agent or other device or mechanism (including browsers, spiders, robots, avatars, or intelligent agents) to navigate or search the Services other than the search engine and search agents that we make available on the Services and other than the generally available third-party web browsers. If you violate our system or network security, you may face civil or criminal liability. We will investigate occurrences that may involve such violations. We may involve or cooperate with law enforcement authorities in prosecuting users who are involved in such violations.

16. INTELLECTUAL PROPERTY

The Site and App consist of copyrighted and other proprietary information and materials owned by HMEEx such as logos, trade-dress, source code, object code, trademarks, original content, images, and videos (our “Intellectual Property”). We reserve all rights, titles, and interests in and to the Intellectual Property found on the Site and App, and all of our proprietary and confidential information, and materials provided to you through the Site and App or otherwise provided through our Services, including any related intellectual property rights. You obtain no right, title, or interest to our Intellectual Property under these Terms in or to the Site or App, or any material or information provided to you from us through the Services. Without limiting the foregoing, you do not have permission to copy, reproduce, make derivative works from, distribute, republish, download, display, perform, post electronically or mechanically, transmit, record, or mirror any of the Intellectual Property on the Site or App without the prior written permission of HMEEx. You may only display, download, or print our Intellectual Property for the purpose of using the Services as an internal or personal business resource. You agree to take such actions as HMEEx may reasonably request to perfect HMEEx’s rights to the Intellectual Property.

17. USER CONTENT

Certain features of the Services may allow you or your Authorized Users to transmit or submit text, information, customer info, chemical data, building and site plans, graphics, logos, , communications, suggestions, comments, improvements, ideas or other feedback to Us related to Our Site and/or App, or other materials (collectively, “User Content”). User Content must not: (a) misrepresent your identity or affiliation with any person or organization; (b) seek to collect others’ Personal Information by any means; (c) seek to transmit chain letters, or bulk or junk email; (d) relate to contests, sweepstakes, or other sales promotions; (e) include information that may be used to track, contact, or impersonate another individual; (f) infringe any intellectual property or other proprietary rights of HMEEx or any other person; (g) seek to harm or exploit children; (h) contain any material that is false, defamatory, libelous, obscene, harassing, discriminatory, profane, or otherwise offensive, damaging, unlawful, or harmful; (i) violate HMEEx’s or any other person’s or entity’s legal rights, contain any material that could give rise to civil or criminal liability under applicable laws or regulations, or otherwise promote, advocate or assist any illegal activity or unlawful act; or (j) be otherwise objectionable as determined by HMEEx at our sole discretion.

We reserve the right, but have no obligation to, monitor, review, screen, post, remove, reject, or store User Content at any time and for any reason without notice. We may refuse, alter, or remove User Content without notice for any reason at our sole discretion. We do not endorse any User Content, and the User Content posted does not reflect our opinions, views, or advice. We take no responsibility and assume no liability for any User Content that you or a third party posts or sends on or through the Services, nor do we assume any liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. To the extent that the law permits, you release us from any claims or liability related to any User Content posted via the Services and from any claims related to the conduct of any other users.

In consideration for your use of the Services, you hereby grant to HMEEx an irrevocable, worldwide, royalty-free, fully-paid, sub-licensable, perpetual license to (i) use your User Content to distribute and deliver the Site and the Services to you and others or to use your User Content as otherwise directed by you; and (ii) reproduce, make derivative works from, distribute, publish, display, or perform your User Content in whole or in part, by any and all means and media, in connection with our internal business purposes or providing or improving the Services. You expressly permit HMEEx to display your name and/or logo for marketing and promotional purposes, if we abide by any branding guidelines you provide us in writing. You may withdraw

your consent at any time and for any reason by writing to us at support@hmexassistant.com. We may sublicense and/or assign your User Content to third parties with your written consent. HMEEx has no obligation to use any User Content, and HMEEx's use of any User Content does not create or imply any endorsement of or affiliation with you. To the extent permitted by applicable laws, you hereby covenant not to assert against us any moral rights you may have in any of your User Content.

18. DATA RETENTION

HMEEx collects and stores data as described in our [Privacy Policy](#), and we retain data according to our internal Data Retention Policy. If we cannot provide you with the Services for any reason, or if we undergo a liquidation event or dissolution event, we will give you 30 days' written notice describing your rights, if any, to your data on the Services. During the 30-day notice period, you may download or copy your User Content, submissions, information, and all other data you have input to the Services ("Customer Data"). At the conclusion of the 30-day notice period, we will delete, de-identify, anonymize, and/or aggregated all of your Customer Data and it will not be commercially used or disclosed by us unless required by law, subpoena or court order. Where such disposition of your Customer Data is infeasible, we will securely store your Customer Data in isolation from other data being processed. You are solely responsible for compliance with privacy laws as it pertains to any Personal Information contained in your Customer Data.

19. INFRINGING CONTENT

We take the intellectual property and privacy rights of others very seriously. If You have any concerns that any content on the Site is improper or infringing ("Infringing Content"), please contact us at support@hmexassistant.com, and if you would like the Infringing Content to be investigated for removal, please provide:

- a. A detailed description of the Infringing Content, including where it is located;
- b. A statement that You have a good faith belief that the user who posted the Infringing Content does not have permission to use the Infringing Content;
- c. A statement that You are the owner, or exclusive agent of the owner, of the Infringing Content;
- d. Your contact information, including telephone number and physical address, and
- e. A signed and sworn statement, under penalty of perjury, that Your statements above are true.

20. THIRD PARTY CONTENT AND WEBSITES

Some of the data and other content that is made available to you via the Services may be provided by a third party with the intent that it be used by You ("Third Party Content"). Third Party Content remains the property of the third party who uploaded or posted it. No license or transfer of interests, rights, or titles shall be granted by using the Third Party Content through the Services. Similarly, the Site or App may contain link to third party websites. HMEEx is not responsible for the content of any other websites, nor do we make any representations about the content or accuracy of material on any other websites. Inclusion of any linked website on our Site or App does not imply HMEEx's approval or endorsement of the website. Please be aware that when you click on links that take you to external websites, you do so at your own risk and you will be subject to their privacy policies and practices and not ours. Any concerns regarding any such website, service or resource, or any hyperlink thereto, should be directed to the website's owner or operator.

21. ELECTRONIC SIGNATURE

By accessing or using the Services or typing your name into any of our electronic forms and indicating your acceptance or submission of information by clicking a box, you consent to (a) HME_x communicating with you electronically; (b) receiving all applications, notices, disclosures, and authorizations (collectively, “Records”) from us electronically; and (c) entering into agreements and transactions using electronic Records and signatures. Please note that federal law treats electronic signatures as having the same legal force and effect as if they were signed on paper by hand, and online contracts have the same legal force as signing an equivalent paper contract in ink. We will use electronic documents for all communications, notices, agreements, disclosures, authorizations, and other documents necessary to provide you with the Services. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. You must have a computer or other web-enabled device, an internet connection, an active email account, and the ability to receive and read PDF files to conduct business with us electronically. You agree to be responsible for keeping your own Records. If you require assistance with your Records or if you wish to receive Records in paper format or to withdraw your consent to receiving electronic records from us, please contact us at support@hmexassistant.com. Agreements and transactions executed prior to this request will remain valid and enforceable.

22. DISCLAIMER OF WARRANTIES

YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. HME_x MAKES NO EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES, OR GUARANTEES IN CONNECTION WITH THE SERVICES OR RELATING TO THE AVAILABILITY, QUALITY, RELIABILITY, SUITABILITY, TIMELINESS, TRUTH, ACCURACY OR COMPLETENESS OF THE APP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES IS PROVIDED TO YOU ON AN “AS IS,” “AS AVAILABLE” AND “WHERE-IS” BASIS WITH NO WARRANTY OF IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. HME_x DOES NOT WARRANT THAT THE SERVICES WILL MEET ALL OF YOUR REQUIREMENTS OR THAT ITS OPERATIONS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECT WITHIN THE SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION, REPRESENTATION OR ADVICE GIVEN BY HME_x SHALL CREATE A WARRANTY WITHOUT A WRITING SIGNED BY HME_x EXPRESSLY CREATING SUCH WARRANTY.

23. INDEMNIFICATION

YOU AGREE TO INDEMNIFY AND HOLD HME_x, OUR SUBSIDIARIES AND OUR AFFILIATES, AND THEIR RESPECTIVE MEMBERS, DIRECTORS, SHAREHOLDERS, OFFICERS, AGENTS, PARTNERS AND EMPLOYEES, HARMLESS FROM ANY LOSS, LIABILITY, COST, EXPENSE, CLAIM, DAMAGES, OR DEMAND, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, DUE OR RELATING TO OR ARISING OUT OF (A) YOUR USE OF THE SERVICES IN VIOLATION OF THESE TERMS; (B) YOUR BREACH OF THESE TERMS; OR (C) ANY BREACH OF YOUR REPRESENTATIONS AND WARRANTIES SET FORTH IN THESE TERMS.

24. LIMITED LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HME_x BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF DATA,

REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, HOWEVER ARISING, EVEN IF HME_x KNOWS THERE IS A POSSIBILITY OF SUCH DAMAGE. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL HME_x BE LIABLE TO YOU FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE AGGREGATE OF THE FEES PAID BY YOU TO HME_x IN SUBSCRIPTION FEES DURING THE THREE MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY OR, IF NO FEES WERE PAID DURING SUCH THREE MONTH PERIOD, ONE HUNDRED US DOLLARS (\$100), IN EACH CASE, WHETHER OR NOT HME_x HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

25. CLASS ACTION WAIVER

YOU HEREBY WAIVE ANY RIGHT TO COMMENCE OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT AGAINST HME_x RELATED TO ANY CLAIM, DISPUTE OR CONTROVERSY, AND, WHERE APPLICABLE, YOU HEREBY AGREE TO OPT OUT OF ANY CLASS PROCEEDING AGAINST HME_x OTHERWISE COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THESE TERMS.

26. ARBITRATION AGREEMENT

Please read this section carefully. This section affects rights that you may otherwise have. It provides for resolution of most disputes through arbitration instead of court trials and class actions. YOU AGREE TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, ALSO MAY BE UNAVAILABLE OR LIMITED IN ARBITRATION.

Any controversy or claim between you and HME_x arising out of or relating to: (a) these Terms, or the breach thereof; (b) your access to or use of the Services; or (c) any alleged violation of any federal or state or local law, statute or ordinance (each such controversy or claim, a "Claim"), shall be resolved exclusively by a binding arbitration administered by the Arbitration Service of Portland in accordance with its Commercial Arbitration Rules, with the arbitration to be held in Whatcom County, State of Washington, USA. The arbitration shall be governed by the Federal Arbitration Act and by the internal laws of the State of Washington, without regard to conflicts of laws principles. Claims shall be heard by a single arbitrator. The parties may choose for themselves whether to appear in person, by phone, or through the submission of documents. The prevailing party shall be entitled to an award of reasonable attorneys' fees. In arbitration, the parties give up their right to have their Claim decided by a judge or jury, and their Claim is instead decided by an arbitrator. Discovery rights and appellate rights in arbitration are more limited than in court. The arbitrator shall issue a reasoned award in writing, including all findings of fact and law upon which the award was made.

YOU AND HME_x AGREE THAT EACH MAY BRING OR PARTICIPATE IN CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING. UNLESS BOTH YOU AND HME_x AGREE OTHERWISE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. IF A CLAIM IMPLICATES THIS SECTION, AND IF THIS SECTION IS FOUND TO BE INVALID, UNENFORCEABLE, OR ILLEGAL

BY A COURT OF COMPETENT JURISDICTION, THEN SUCH CLAIM MUST BE ADJUDICATED BY A COURT AND NOT BY AN ARBITRATOR.

27. GOVERNING LAW

If any claim is not subject to arbitration under the Arbitration Agreement herein, you hereby consent to the personal and exclusive jurisdiction in, and the exclusive venue of, the state and federal courts located in Whatcom County, Washington, which is the place of performance of these Terms. Additionally, HMEEx controls and operates the Services from its offices within the United States. If you choose to access the Services from another location, you do so on your own initiative and are responsible for compliance with applicable local laws. You acknowledge that you may not be able to access all or some of the Services outside of the United States, and that access thereto may not be legal by certain persons or in certain countries.

28. REMEDIES AND EQUITABLE RELIEF

By using the Services, you acknowledge that damages may be an inadequate remedy if you or anyone under your direction or control breaches or threatens to breach any of these Terms, and that any such breach may cause us significant and irreparable injury and damage. Accordingly, you acknowledge that we shall be entitled, without waiving any additional rights or remedies otherwise available to it at law or in equity or by statute, to seek injunctive relief in such event without the necessity of posting a bond. In addition, and without limiting any other remedies available herein, failure to obtain a separate, dedicated entitlement to your License for each individual accessing the Services or otherwise permitting multiple individuals to share a single entitlement to a License, whether by you or any of your Authorized Users, in violation of Section 6 herein is a breach of these Terms for which you will be strictly liable to HMEEx and hereby agree to pay us an amount equal to our lost revenues and actual costs incurred related to such breach of these Terms.

29. TERM AND TERMINATION

These Terms shall commence on the date you first download or use the Services and shall remain in effect as long as you access or use the Services. Either party may terminate the contract formed by these Terms at any time. If you wish to terminate these terms, contact us to cancel your subscription and delete the Services from your device. If we wish to terminate these Terms with you, we will notify you by email or other means. Upon termination of these Terms: (a) the rights and licenses granted to you herein shall terminate as to the terminated rights; (b) you shall cease all use of the Services; and (c) we may at our own discretion remove and/or purge data, account information, and any other information obtained by us in connection with providing you the Services. We reserve the right to disable any username, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms. The terms and conditions set forth under the following section headings shall survive termination: Acceptable Use; Use Restrictions; Contents and Ownership; User Content; Disclaimer of Warranties; Limitations on Liability; Class Action Waiver; Arbitration Agreement; and General.

30. GENERAL

The relationship of the parties hereto is that of independent contractors. No joint venture, partnership, employment, or agency relationship exists between you and HMEEx as a result of these Terms or your use of the Services. Nothing in these Terms will be deemed to confer any third-party rights or benefits. You may not assign, delegate, or transfer these Terms or your rights or obligations hereunder in any way (by operation of law or otherwise) without prior written

consent from HMEEx. We may transfer, assign, or delegate these Terms and our rights and obligations without consent. These Terms constitute the entire agreement between the parties with respect to the subject matter hereof. If any provision of these Terms is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect. HMEEx's failure to enforce any provision of these Terms will not be deemed a waiver of that provision or any other provision of these Terms. If any provision of these Terms is held invalid or unenforceable under applicable law, that portion shall be construed in a manner consistent with applicable law to accomplish, as nearly as possible, the objective thereof, or shall be severed from the document if, and solely, to the limited extent such construction is not possible, and the remaining portion of these Terms shall remain in full force and effect.