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4. LIMITATION OF LIABILITY:

- a) You acknowledge that each of Owner and Licensing Agent's obligations and liabilities with respect to the Product are exhaustively defined in this Agreement. You are responsible for the consequences of any use of any of the Product (whether or not such use was consistent with the license granted hereunder) created therefrom. Whether or not Owner or Licensing Agent has been advised of their possibility, neither Owner nor Licensing Agent, or any of their representatives or agents, directors, officers, employees, agents, representatives or members, shall be liable, whether under contract, tort (including negligence) or otherwise, for any indirect, special, punitive, incidental or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused, that may be suffered by you or any of your directors, officers, employees, agents, representatives or contractors or any third party.
- b) If at any time an allegation of infringement of any rights of any third party is made, or in Owner or Licensing Agent's opinion is likely to be made, with respect to any of the Product, Owner or Licensing Agent may, at its option and at its own expense (i) obtain for you the right to continue using the Product, (ii) modify or replace the Product or any portion thereof so as to avoid any such claim of infringements, or (iii) refund to you the License Fee. Neither Owner nor Licensing Agent shall have any liability to you if any claim of infringement would have been avoided except for your refusal to use any modified or replacement Product supplied or offered to be supplied pursuant to this Section 4(b) or to otherwise cease using the Product. Notwithstanding anything contained in this Agreement, and except as set forth in Section 4(b) hereof, Owner and/or Licensing Agent's liability to you for damages pursuant to this Section 4(b), if any, shall not exceed the amounts of the License Fee paid by you for the Product subject to any such claim.
- c) Section 4(b) state the entire liability of Owner and Licensing Agent with respect to the infringement or alleged infringement of any third party rights of any kind whatsoever by any of the Product.

5. TERMINATION:

This Agreement may be terminated immediately by Owner or Licensing Agent upon breach of any provision of this Agreement by you. Upon any termination of this Agreement, you shall immediately discontinue the use of the Product and shall within ten (10) days either return files(s) on diskette(s), if any, to Owner or Licensing Agent or certify in writing to Owner or Licensing Agent that the Product has been deleted from your computer and is eliminated from your premises.

6. GOVERNING LAW; ATTORNEY'S FEES:

This Agreement shall be governed by the laws of the State of New York without reference to its conflict of laws provisions and you further consent to jurisdiction by the state and federal courts sitting in the State of New York.

7. MISCELLANEOUS:

This Agreement constitutes the complete and exclusive agreement between Owner, Licensing Agent and you with respect to the subject matter hereof, and supercedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. This Agreement may not be modified except in writing duly signed by an authorized representative of Owner, Licensing Agent and you. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable, and such decision shall not affect the enforceability (i) of such provision under other circumstances, or (ii) of the remaining provisions hereof under all circumstances. Headings shall not be considered in interpreting the Agreement.

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