

COMMERCIAL TERMS AND CONDITIONS

These Commercial Terms and Conditions (the “**Terms**”) are effective upon (i) execution of an ordering document signed by both parties referencing these Terms or (ii) electronic acceptance of these Terms and submission of an order for services via the Monte Carlo website (each referenced herein as an “**Order Form**”), by and between Monte Carlo Data, Inc., a Delaware corporation (“**Monte Carlo**”), and the party named as Customer in the Order Form. These Terms together with each Order Form are collectively the “**Agreement**.” The Agreement governs Customer’s access to and use of the service and software offered by Monte Carlo and described on the applicable Order Form (the “**Service**”).

1. The Service

- 1.1. **Orders.** Monte Carlo and Customer may enter into one or more Order Forms referencing these Terms, pursuant to which Customer may purchase the right to access and use the Service, solely for Customer’s internal business purposes, for the period identified in the applicable Order Form (“**Term**”). The Service is subject to modification from time to time at Monte Carlo’s sole discretion, provided that such modifications shall not result in a material degradation to the features or functions of the Service.
- 1.2. **Scope of Use.** The Service may be used by Customer for internal business purposes pursuant to the service entitlements listed in the applicable Order Form and the usage or license grants set forth in these Terms. Use of the Service for any other purpose (including use by Customer’s affiliated companies or application of the Service to other datasets or for any other purpose) requires a separate Order Form. This notwithstanding, Customer affiliates may use the Service under Customer’s Order Form upon written agreement from Monte Carlo, provided, however, that Customer shall be responsible for such affiliates’ compliance with the Agreement.
- 1.3. **Authorized Users.** An “**Authorized User**” is a person who the Customer, or a person with admin access on Customer’s account, has invited to join Customer’s account on the Service, either via the interface of the Service or via a request to Monte Carlo. Authorized Users may be employees, contractors or agents of Customer. Customer is responsible for all actions by Authorized Users on Customer’s account.
- 1.4. **Software License Grant.** Subject to Customer’s compliance with the terms and conditions of the Agreement, Monte Carlo grants to Customer a limited, revocable, non-exclusive, non-sublicensable, non-transferable, royalty-free, worldwide license during the Term to install, integrate, and use for its own internal business purposes the Service and any computer software program, application programming interface or other technology that is owned by Monte Carlo and provided to Customer hereunder (collectively “**Software**”) solely in connection with Customer’s use of the Service, in object code form only (except as otherwise expressly authorized in writing by Monte Carlo).
- 1.5. **Restrictions.** Customer shall not, and shall not allow any third party under its direction or control to: (i) license, sublicense, sell, resell, use as a service bureau, or otherwise use the Service for a third party’s benefit unless authorized by Monte Carlo; (ii) transfer, assign (except as provided in this Agreement), distribute or otherwise commercially exploit the Service; (iii) modify or make derivative works based upon the Service or any Software included therein; (iv) create Internet “links” to the Service or “frame” or “mirror” any content on any other server or wireless or Internet-based device; (v) reverse engineer or decompile the Service; (vi) interfere with or make use of the Service in any manner not consistent with the Documentation (vii) upload Customer Data that may contain, or otherwise introduce to the Service, any malicious code or programming routines, macros, or other elements that may damage, surreptitiously intercept or expropriate any system, data, or personal information; (viii) access the Service for purposes of penetration or security testing, or any benchmarking or competitive purposes; or (ix) use the Service in contravention of applicable law.
- 1.6. **Third Party Services.** The Service operates on or with or using integrations and/or other services or software selected by Customer and operated or provided by third parties (“**Third Party Services**”), including such integrations listed on an applicable Order Form. Monte Carlo is not responsible for the operation of any Third Party Services nor the availability or operation of the Service to the extent such availability and operation is dependent upon Third Party Services. Customer is responsible for procuring any and all rights necessary for it to access Third Party Services and for complying with any applicable terms or conditions thereof. Monte

Carlo does not operate or control in any way any information, software, products or services available on such Third Party Services. Monte Carlo does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

2. **Billing and Payments.**

- 2.1. **Fees.** Fees for the Service are described in an associated Order Form or invoice. All fees due are payable in U.S. Dollars unless otherwise stated on an Order Form. Monte Carlo's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all applicable sales, use, excise, transfer, and other transaction taxes, levies or duties related to the purchase of the Service, excluding only United States (federal or state) taxes based solely on Monte Carlo's income.
- 2.2. **Billing and Payment.** Monte Carlo issues invoices for the Service as agreed upon in the applicable Order Form. Unless otherwise stated in an Order Form, fees for the Service are due within 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information and notifying Monte Carlo of any changes to such information. All payment obligations are non-cancelable, and all amounts paid are nonrefundable, except as may be expressly set forth in the Agreement.

3. **Intellectual Property Rights & Restrictions.**

- 3.1. **Monte Carlo Intellectual Property.** Monte Carlo shall retain all intellectual property rights in the Service and Software, including any and all derivatives, changes and improvements thereto, and Customer agrees that it obtains no intellectual property rights or licenses by these Terms except those expressly granted herein. Customer agrees that it shall (i) not attempt to infiltrate, hack, reverse engineer, decompile, or disassemble the Service or Software; (ii) not represent that it possess any proprietary interest in the Service or Software; (iii) not directly or indirectly, take any action to contest Monte Carlo's intellectual property rights or infringe them in any way; and (iv) except as specifically permitted hereunder, not use the name, trademarks, trade-names, and logos of Monte Carlo.
- 3.2. **Customer Intellectual Property.** Customer retains all right, title, and interest in and to all data, information, files or other materials and content that Customer makes available to Monte Carlo in connection with Customer's use of the Service (the "**Customer Data**"). Customer grants to Monte Carlo the necessary licenses and rights to Customer Data solely as necessary for Monte Carlo to provide the Service to Customer. Monte Carlo will not use or access any Customer Data except as necessary to provide the Service. Monte Carlo will promptly return or destroy all Customer Data in its possession or control upon termination of the Customer's account or at Customer's written request.
- 3.3. **Monte Carlo Platform Data.** In the course of providing the Service, Monte Carlo may collect statistical data and performance information, analytics, meta-data or similar information, generated through instrumentation and logging systems, regarding the operation of the Service, including Customer's use of the Service (the "**Platform Data**"). Nothing in the Agreement shall restrict Monte Carlo's right to collect Platform Data or to use it for any internal business purpose, including but not limited to billing, operational excellence, and quality assurance, provided however, that (i) Platform Data will not include any Customer Data, and (ii) Monte Carlo will not disclose Platform Data to any third party in a manner that allows such third party to identify Customer or any Authorized User, other than Monte Carlo's employees, agents or service providers who are subject to obligations of confidentiality with respect to such Platform Data.
- 3.4. **Feedback.** Customer may, from time to time, provide Monte Carlo with ideas, suggestions, feedback, recommendations or improvements pertaining to the Service (collectively, "**Feedback**"). Customer hereby grants Monte Carlo a non-exclusive, perpetual, irrevocable, royalty-free license to use all Feedback for any purpose. Feedback is provided to Monte Carlo on an "as-is" basis without warranties of any kind.

4. **Security and Data Protection.**

- 4.1. **Security.** Each party has obligations with respect to the security of the Service, a customer's account, and Customer Data. Monte Carlo will implement and maintain appropriate technical and organizational security measures ("TOSMs") that align with industry standards. Monte Carlo's current TOSMs are available at: www.montecarlodata.com/technical-and-organizational-security-measures/ and will not be materially diminished during the term of the Agreement. Customer is responsible for all activities in its account undertaken by Customer or its employees or a third party under Customer's direction or control. Monte Carlo is not responsible for unauthorized access to Customer's account unless caused by Monte Carlo's breach of this Agreement.
- 4.2. **Account Security.** Login credentials cannot be shared or used by more than one individual Authorized User. Customer will notify Monte Carlo immediately if Customer believes that an unauthorized third party has accessed Customer's account on the Service, or that an Authorized User's account credentials or Customer Data have been compromised.
- 4.3. **Data Protection.** The parties will comply with the data processing agreement ("DPA") available at <https://www.montecarlodata.com/data-processing-addendum/>, which is incorporated into the Agreement. The parties acknowledge and agree that the DPA will apply only to the extent Data Protection Laws and Regulations and/or US State Privacy Laws apply to the Agreement, as those terms are defined in the DPA.
5. **Confidentiality.**
 - 5.1. **Confidential Information.** These Terms supersede any applicable non-disclosure agreement between the parties with respect to Customer's use of the Service and the exchange of confidential information hereunder. "Confidential Information" shall mean all information of a party disclosed to the other party, regardless of the form of disclosure, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including without limitation and without the need to designate as confidential (i) with respect to Customer, the Customer Data, but not the Platform Data, and (ii) with respect to Monte Carlo, the pricing terms offered to Customer by Monte Carlo.
 - 5.2. **Nondisclosure.** Each party (each a "Receiving Party") agrees that (i) it shall use and reproduce the Confidential Information of the other party (the "Disclosing Party") only for purposes of exercising its rights and performing its obligations under these Terms and only to the extent necessary for such purposes and (ii) it shall restrict disclosure of such Confidential Information to the Receiving Party's employees, consultants, service providers or advisors who have a need to know and who are bound by obligations of confidentiality and non-use at least as protective of such information as these Terms, and shall not otherwise disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The Receiving Party will exercise at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. Notwithstanding the foregoing, it shall not be a breach of these Terms for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.
 - 5.3. **Exceptions.** Notwithstanding anything to the contrary herein, neither party shall be liable for using or disclosing information that such party can prove: (i) was publicly known at the time it was disclosed or has become publicly known through no fault of the Receiving Party; (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of these Terms by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; or (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in these Terms.
6. **Representations and Warranties.**

- 6.1. **Customer Representations and Warranties.** Customer represents and warrants that (i) Customer owns or has obtained all rights, consents, permissions, or licenses necessary to allow the Service's access to, or possession, processing, or use of the Customer Data and (ii) none of the Customer Data violates this Agreement, any applicable law, or any third party's intellectual property or other right.
- 6.2. **Monte Carlo Representations and Warranties.** Monte Carlo represents and warrants to Customer that Monte Carlo will provide the Service to Customer (i) in accordance with all applicable laws, rules and regulations and (ii) in substantial conformance in all material respects with the documentation and specifications of the Service available at <https://docs.getmontecarlo.com/> (collectively the "Documentation").
- 6.3. **Mutual Representations and Warranties.** Each party represents and warrants that it has the necessary corporate authority to enter into this Agreement, and this Agreement is a valid and binding obligation, enforceable against it, in accordance with its terms.
- 6.4. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, MONTE CARLO PROVIDES THE SERVICE TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, MONTE CARLO DOES NOT WARRANT THAT THE SERVICE WILL BE DELIVERED OR PERFORMED ERROR-FREE OR WITHOUT INTERRUPTION OR THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR BUSINESS RESULTS BY USE OF THE SERVICE.
7. **Indemnification.**
 - 7.1. **Customer Indemnification.** Customer shall defend, indemnify and hold harmless Monte Carlo and its officers, directors, consultants, employees, successors and permitted assigns, from and against any losses, damages, costs, liabilities and expenses (including reasonable attorneys' fees) resulting from any third party claim, demand, action, subpoena, request or attestation (collectively, a "Claim") arising out of or relating to Monte Carlo's access to, or possession, processing or use of the Customer Data in compliance with this Agreement.
 - 7.2. **Monte Carlo Indemnification.** Monte Carlo shall defend, indemnify and hold harmless Customer and its officers, directors, consultants, employees, successors and permitted assigns, from and against any losses, damages, costs, liability and expenses (including reasonable attorney's fees) resulting from any Claim that any software component contained within the Service, in the form made available to Customer, infringes a copyright, registered patent, trademark or other intellectual property right of a third party. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Monte Carlo, (ii) that are modified after delivery by Customer not at Monte Carlo's direction, (iii) combined with other products, processes or materials by Customer not at Monte Carlo's direction where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer's use of the Service is not in accordance with this Agreement.
 - 7.3. **Indemnification Remedies.** In addition to Monte Carlo's indemnity obligations, if the Service becomes, or in Monte Carlo's reasonable opinion is likely to become, the subject of an infringement claim, Monte Carlo may, at its option and expense (i) replace or modify the Service to be non-infringing, (ii) obtain for Customer the right to continue using the Service, or (iii) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.
 - 7.4. **Indemnification Procedure.** A party seeking indemnification under this Section will: (i) give prompt written notice of such Claim to the other party; (ii) give the other party sole control over the defense and settlement of such claim; and (iii) provide all available information as may be reasonably requested by the other party. No party shall settle any such Claim in a manner that does not unconditionally release the other party without

the other party's written consent, not to be unreasonably withheld or delayed. This Section 7 sets forth each party's exclusive remedy for any third party infringement claim.

8. Limitation of Liability.

- 8.1. **Exclusion of Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.2. **General Liability Cap.** EXCEPT AS SET FORTH IN SECTIONS 8.3 AND 8.4, IN NO EVENT WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THE AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO MONTE CARLO DURING THE TWELVE MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES ("ANNUAL FEES").
- 8.3. **Data Protection Claims Cap.** IN NO EVENT WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THE AGREEMENT FOR (A) VIOLATION OF DATA PROTECTION LAWS, OR (B) BREACH OF CONFIDENTIALITY OR DATA SECURITY OBLIGATIONS WITH RESPECT TO CUSTOMER DATA PROVIDED TO THE SERVICE, EXCEED TWO TIMES (2X) ANNUAL FEES.
- 8.4. NOTHING IN THIS AGREEMENT SHALL LIMIT A PARTY'S LIABILITY FOR (A) INDEMNIFICATION OBLIGATIONS IN SECTION 7, (B) BREACH OF CONFIDENTIALITY (EXCLUDING BREACH RELATED TO CUSTOMER DATA PROVIDED TO THE SERVICE, WHICH IS SUBJECT TO THE LIMITATION IN SECTION 8.3), (C) ITS VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (D) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, OR (E) IN THE CASE OF CUSTOMER, CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- 8.5. **Acknowledgement.** THE LIABILITIES LIMITED BY THIS SECTION 8 WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. Term and Termination.

- 9.1. **Term and Termination.** These Terms shall be effective for so long as there is an Order Form in effect between Customer and Monte Carlo, or until otherwise terminated as provided herein. Either party may terminate these Terms by giving written notice to the other party if: (i) the other party breaches a material provision of these Terms and fails to cure the breach within 30 days after being given written notice thereof; or (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party or any petition by or on behalf of such party is filed under any bankruptcy or similar laws. In the case of termination by Customer for Monte Carlo's material breach in accordance with this Section 9.1, Monte Carlo shall refund to Customer a pro-rata share of any pre-paid fees.
- 9.2. **Effect of Termination.** Upon termination or expiration of these Terms for any reason, Customer's right to access and use the Service and Software shall immediately terminate and Customer will immediately cease use of the Service and Software.
- 9.3. **Survival.** Section 3 (Intellectual Property Rights & Restrictions), Section 4 (Security and Data Protection), Section 5 (Confidentiality), Section 6 (Representations and Warranties), Section 7 (Indemnification), Section 8 (Limitation of Liability) and Section 11 (Miscellaneous) shall survive any expiration or termination of these Terms.

10. Marketing.

- 10.1 **Name and Logo.** Neither party shall, except as may be required by applicable law, issue or release any announcement, statement, press release, or other publicity or marketing materials relating to the Agreement or otherwise use the other party's marks or logos without the prior written consent of the other party. Provided, however, Monte Carlo may include Customer's name and logo in its lists of Monte Carlo customers, its public website, and other promotional material, in each case in accordance with any Customer brand guidelines to the extent available to Monte Carlo. Monte Carlo agrees to promptly (and in any event within 10 days) cease such uses of Customer's name and logo following Customer's written request.
- 10.2 **Reference.** Customer agrees to provide references to industry analysts and prospective customers of Monte Carlo, and to other parties interested in Monte Carlo's software and services, upon Monte Carlo's request.
- 11. Miscellaneous.**
- 11.1 **Governing law.** These Terms are governed by the laws of the State of California, without regard to its conflict of laws principles, and any dispute arising from the Agreement shall be brought exclusively before the state and federal courts in San Francisco, California, and each party irrevocably submits to the jurisdiction of such courts.
- 11.2 **Assignment.** This Agreement may not be assigned by either party without the prior written approval of the other party (such approval not to be unreasonably withheld), except in connection with (i) a merger, consolidation, or similar transaction involving (directly or indirectly) a party, (ii) a sale or other disposition of all or substantially all of the assets of a party, or (iii) any other form of combination or reorganization involving (directly or indirectly) such party. Any purported assignment in violation of this section shall be null and void and have no effect. Subject to the foregoing, the Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.
- 11.3 **Order of Precedence.** In the event of a conflict between the terms and conditions of these Terms and those of any Order Form, the terms and conditions of the Order Form shall control with respect to that Order Form only.
- 11.4 **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by email; provided, however, Monte Carlo may provide any general notice about the Service by posting a notice on the Monte Carlo website.
- 11.5 **Relationship of Parties.** The parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other party. Neither party shall hold itself out as an agent of the other party. These Terms will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.
- 11.6 **Severability.** If any provision of these Terms is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.
- 11.7 **Complete Agreement.** The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
- 11.8 **Temporary Suspension.** Monte Carlo may temporarily suspend Customer's access to the Service if Monte Carlo reasonably determines that: (a) Customer's use of the Service disrupts or creates a security risk to the Service or Monte Carlo systems; (b) Customer is using the Service in violation of any applicable law or regulation or these Terms; or (c) Customer fails to pay undisputed fees owed to Monte Carlo in accordance with this Agreement and such fees remain unpaid for more than thirty (30) days after written notice from Monte Carlo. In the event of any suspension pursuant to this section, Monte Carlo will use commercially reasonable efforts to provide written notice thereof to Customer, and to restore access to the Service as promptly as reasonably practicable.

- 11.9. **Force Majeure.** Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent such delay or failure is due to events beyond its reasonable control, such as, without limitation, flood, earthquake, fire, acts of God, military insurrection, civil riot, or labor strikes.