

MONITAUR SOFTWARE AS A SERVICE

TERMS AND CONDITIONS

Software as a Service Terms and Conditions (the “Agreement”) is agreed by and between Monitaur Inc., a Delaware corporation (“**Monitaur**”), and the entity set forth on the signature page hereto (“**Client**”) as to the later of the dates of the signatures of either Party on such signature page (“**Effective Date**”). Client and Monitaur are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Monitaur operates the Monitaur Platform (defined below) through which Monitaur makes available advanced model governance and assurance services, including proprietary risk controls and governance policies, to its clients through its software-as-a-service solution together with the Monitaur SDK, as well as other services provided by Monitaur from time to time (the “**Services**”); and

WHEREAS, Monitaur desires to provide certain of its Services through, or related to, the Monitaur Platform, and Client desires to subscribe to or purchase such Services, as set forth in any order form entered between the parties in writing which are incorporated herein by reference (“**Order Form(s)**”) and on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree as follows:

1. Definitions.

1.1 “**Affiliate**” means any corporation or entity of either Party, which is owned or controlled by or under common control with a Party. For purposes of this definition, “**control**” shall mean the right to exercise directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the corporation or entity or the power to direct or cause the direction of the management or policies of the corporation or entity.

1.2 “**Client Information**” means information or data submitted by, or on behalf of, Client or its Users in connection with the Services, including without limitation configurations, settings and Transaction Data.

1.3 “**Client Models**” means Client’s or its third-party licensors’ algorithms, models or other functions that create Results, outputs, or decisions based on Transaction Data and/or variables determined by Client, as used or applied by Client in connection with their business.

1.4 “**Client Model Information**” means information and data about the model business and technical owners, model configuration, model governance, model algorithms, model dependencies, model training, model use and other pertinent information and data provided by Client and/or gathered by Monitaur as part of delivering the Services.

1.5 “**Client System**” means Client’s Models and Client’s other internal website(s), systems, servers, applications and other equipment and software used in the conduct of its business.

1.6 “**Fees**” means the fees for the Services as set forth in the applicable Order Form and Schedule A.

1.7 “**Intellectual Property Rights**” means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in

each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.

1.8 **“Monitaur Platform”** means Monitaur’s software, risk controls and governance policies, API’s, storage and web-based interfaces and platform built, managed and/or provided by Monitaur through which the Services are provided.

1.9 **“Monitaur SDK’s”** means Monitaur’s libraries, API’s or code intended for Client’s use in Client Systems to enable provision of Transaction Data and Client Model Information to Monitaur and performance of the Services, as made available by Monitaur from time to time.

1.10 **“Project”** means a unique instance of a Client modeling project, as defined by Client, with a dedicated Project Info summary page and an ability for governance controls to be applied.

1.11 **“Results”** means the output(s) of the Services from the Monitaur Platform as delivered to Client. Results do not include ideas, concepts or methodologies developed or used by Monitaur in providing the Services to deliver Results.

1.12 **“Subscription Limitations”** means the number of, and/or limitation of Projects, Models, Workspaces, Users, Transactions or Services specified under the heading “Subscription Limitations” on the Order Form.

1.13 **“Subscription Period”** means the initial subscription period set forth in the Order Form for the applicable Services and any subsequent subscription period agreed to in writing by the Parties.

1.14 **“Transaction”** means each individual decision or output generated by any Client Model which is captured and passed to the Monitaur Platform to provide Services.

1.15 **“Transaction Data”** means the inputs, outputs, and related meta information from a Transaction.

1.16 **“Transaction Volume”** means the sum of total Transactions processed through Client Models connected to the Monitaur Platform.

1.17 **“User”** means an employee or contractor appointed by Client to access and use the Monitaur Platform.

1.18 **“Workspace”** means each unique instance of the Monitaur Platform provided for Client to support separation of Client Models and/or Client Information between different departments, business units or user groups.

2. MONITAUR PLATFORM AND SERVICES.

2.1 **Services; Access and Use.** Subject to the terms and conditions of this Agreement, Monitaur hereby grants to Client during the relevant Subscription Period a limited, non-exclusive, non-transferable right, without the right to sublicense, for its Users to access and use the applicable Services, via the Monitaur Platform where applicable, in accordance with this Agreement. Monitaur will provide Client’s Users with, and/or the ability to establish their own login credentials (**“Login Credentials”**) to access the applicable Services. From time to time, Client may designate the Users eligible to use the applicable Services. Client agrees to keep Login Credentials of its Users confidential, and that Client is responsible for all actions taken on the applicable Services utilizing such Login Credentials. For the avoidance of doubt, Client and its Users will not have the right to access or use the Monitaur Platform except to access and use the applicable Services through the Monitaur Platform as specified in the Order Form. Client acknowledges that if the Services are Monitaur Enterprise services (as specified in an Order Form), the database that maintains the Results for Client’s use and any required VPC peering or block/object/file storage will be maintained on Client System.

2.2 **Monitaur SDK's.** Subject to the terms and conditions of this Agreement, Monitaur hereby grants to Client during the relevant Subscription Period a limited, non-exclusive, non-transferable license to use, without the right to sublicense, the Monitaur SDK's in its Client Systems, solely for the purpose of providing Transaction Data to Monitaur via the Monitaur Platform. Client agrees to promptly implement any updates or upgrades to the Monitaur SDK's provided by Monitaur from time to time.

2.3 **Restrictions.** Client shall not, directly or indirectly, permit any User or third party to, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Monitaur Platform or Monitaur SDK's; (ii) modify, translate, or create derivative works based on any element of the Monitaur Platform, Monitaur SDK's or any related documentation; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Services, Monitaur Platform or Monitaur SDK's; (iv) use the Services, Monitaur Platform or Monitaur SDK's for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Client and its Users; (v) remove any proprietary notices from the Monitaur SDK's or any documentation provided by Monitaur; (vi) publish or disclose to third parties any evaluation of the Services or Monitaur Platform without Monitaur's prior written consent; (vii) provide any Personally Identifiable Information to Monitaur; (viii) use the Services, Monitaur Platform or Monitaur SDK's for any purpose other than its intended purpose; (ix) deliver real-time Client Transactions or Client Data that exceed 500 features and 30,000,000 rows or 5 per second without prior notice and agreement from Monitaur; (x) interfere with or disrupt the integrity or performance of the applicable Services or Monitaur Platform; or (xi) attempt to gain unauthorized access to the Services or Monitaur Platform.

2.4 **No Customizations; No Product Roadmap Commitments.** Client acknowledges and agrees that it shall have remote hosted access to the Monitaur Platform, whether as a multi-tenant or a dedicated single tenant instance as set forth in the Order Form, as the Monitaur Platform is made generally available to other clients of Monitaur as a software-as-a-service, without any warranties, representation, or guarantees, express or implied, regarding any product customizations or any future features or functionality of the Monitaur Platform, unless such product customizations or future features or functionality are explicitly described in this Agreement.

2.5 **Updates and Upgrades.** Client acknowledges and agrees that Monitaur may modify the Monitaur Platform, Monitaur SDK's, and Services from time to time (the "**Modifications**") provided that no such Modifications shall materially reduce the functionality, availability, or security of the Monitaur Platform, Monitaur SDKs, or Services, or cause the Monitaur Platform, Monitaur SDKs, or Services to fail to conform in all material respects to the then-current published documentation. For purposes of this Section, "materially" means a change that results in a substantial and adverse impact on the core functionality, performance, availability, and security of the Monitaur Platform, Monitaur SDK's or Services such that Client cannot reasonably achieve the primary purpose for which It subscribed to the Services. If provided in the relevant Order Form, Client's access may be as a beta user. Monitaur will use reasonable commercial efforts to provide advance notice of any Modifications which may affect the interoperability of Client Systems. Monitaur employs a semantic versioning method to maintain version control and Client shall be responsible for maintaining a supported version of Monitaur SDK's. Monitaur reserves the right to make critical updates or bug fixes without notice and will provide appropriate instruction if any Modification's are required on an urgent basis.

2.6 **Security Measures.** Monitaur shall implement and maintain reasonable and appropriate administrative, technical, physical, and organizational safeguards designed to: (i) ensure the security and confidentiality of Client Information and Results; (ii) protect against any anticipated threats or hazards to the security or integrity of Client Information and Results; and (iii) protect against unauthorized or unlawful access to or use of Client Information and Results and against accidental loss or destruction of, or damage to, Client Information and Results.

3. **Fees:**

3.1 **Payment Terms, Schedule, and Delivery.** Client agrees to pay Monitaur the Fees agreed on the Order Form for its receipt and use of the Services during the Subscription Period; provided that, Client acknowledges and agrees that additional fees shall apply in the event Client utilizes the Services in excess of the Subscription Limitations or if the

Parties agree to increase the Subscription Limitations. If the Subscription Period is renewed pursuant to Section 5.1, any Fees payable shall be paid at Monitaur's prevailing pricing and rates for the applicable Services at the time of such renewal or increase. Except as otherwise set forth in this Agreement, all payments to Monitaur by Client pursuant to this Agreement shall be non-refundable.

3.2 **Invoices and Payment Terms.** Except as otherwise expressly set forth in any Order Form, Monitaur shall invoice Client for the full Subscription Period, and Client shall pay Monitaur, for amounts due under this Agreement and not subject to a good faith dispute, within thirty (30) days of receipt of an invoice. Client shall pay Monitaur via ACH or wire transfer to an account identified by Monitaur from time to time. Past due amounts not subject to a good faith dispute will be subject to an interest charge equal to the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law. If Client's account is past due for thirty (30) days or more, then Monitaur reserves the right to discontinue access to the Monitaur Platform and the Services and suspend the Services until all past due invoices that are not the subject of a good faith dispute are paid in full, provided that Monitaur will provide Client ten (10) business days' advance written notice of such suspension. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction.

3.3 **Taxes.** Client shall pay all applicable sales (unless an exemption certificate is furnished by Client to Monitaur), use, and value-added taxes (but not taxes imposed on Monitaur's net income) with respect to this Agreement or furnish Monitaur with evidence acceptable to the taxing authority to sustain an exemption therefrom. All payments under this Agreement shall be made free and clear of (and without deduction for or grossed up for, as applicable) any withholding or other taxes levied by any country or jurisdiction on payments to be made pursuant to this Agreement that applicable law requires Client to withhold.

4. REPRESENTATIONS AND WARRANTIES.

4.1 Monitaur Limited Warranty.

(a) **Monitaur Service Warranty.** During the Subscription Period, Monitaur represents and warrants to Client that the Services will, under normal use and service, substantially conform to, and perform in all material respects, the functions described in the Order Form and that the Services will be performed in a professional and workmanlike manner. If any such Services fail to comply with the foregoing warranty, Client shall provide written notice to Monitaur, and such notice will describe in reasonable detail the nature of the non-conformity. In such event, Monitaur shall use reasonable efforts to repair or rectify such non-conformity. If Monitaur is unable to repair or rectify such non-conformity, then Client may terminate this Agreement (including without limitation the licenses granted in this Agreement) with respect to the non-conforming Services and in such event, Monitaur will refund to Client on a pro-rata basis as applicable the portion of Subscription Fees or other Services fees paid to Monitaur prior to termination applicable to the access and use of such non-conforming Services after the termination date. The remedy set forth in this section shall be Client's sole and exclusive remedy and Monitaur's sole obligation for any breach of the warranty set forth in this Section 4.1(a).

(b) **Legal Compliance.** Monitaur represents and warrants that it shall comply with all applicable federal and state laws, regulations and rules in connection with the performance of its obligations under this Agreement.

(c) **Exclusions.** The warranty set forth in Section 4.1(a) does not cover defects or non-conformities arising from (i) misuse of the Monitaur Platform, Monitaur SDK's or Services, (ii) any modifications to the Monitaur SDK's made by any person or entity other than Monitaur that is not previously approved by Monitaur, (iii) any use of the Services, Monitaur SDK's or Monitaur Platform by Client, Users, or other third parties, beyond the scope of the express rights contemplated by this Agreement, (iv) any Client Information, (v) any use of the Monitaur Platform or Monitaur SDK's in combination with other software, hardware or data provided by Client or a third party if the defect or nonconformity would not have occurred but for such combination, (vi) Monitaur's compliance with Client's designs, specifications or instructions, or (vii) any delay caused by Client or failure of Client to provide information or assistance

as reasonably requested by Monitaur. Further, Monitaur does not warrant that users will achieve successful results from use of the services.

4.2 **Client Information Warranty.** Client represents and warrants to Monitaur that Client has the right, including in respect of all relevant Intellectual Property Rights and applicable data privacy and other laws, to provide Monitaur access to and use of the Client Information, including without limitation for use in connection with the Monitaur Platform and all other Services. Client, not Monitaur, shall be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness of and the Parties' respective rights to use all Client Information under this Agreement.

4.3 **Mutual Representations and Warranties.** Each Party represents, warrants and covenants to the other Party that: (a) such Party has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (b) such Party's execution of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by such Party to any third party to keep any information or materials in confidence or in trust.

4.4 **Disclaimer.** THE WARRANTIES SET FORTH IN THIS SECTION 4 ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, AND, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, THE MONITAUR PLATFORM, SDK'S AND SERVICES ARE PROVIDED ON AN AS-IS BASIS. CLIENT'S USE OF THE MONITAUR PLATFORM, SDK'S AND SERVICES IS AT ITS OWN RISK. MONITAUR DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. MONITAUR DOES NOT WARRANT THAT THE SERVICES, SDK'S OR MONITAUR PLATFORM IS OR WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES AND AGREES THAT THE MONITAUR PLATFORM, SDK'S AND SERVICES MAY HAVE ERRORS (OR "BUGS") AND MAY ENCOUNTER UNEXPECTED TECHNICAL PROBLEMS. ACCORDINGLY, FROM TIME TO TIME, CLIENT MAY EXPERIENCE DOWNTIME AND ERRORS IN THE OPERATION, FUNCTIONALITY OR PERFORMANCE OF THE MONITAUR PLATFORM, SDK'S OR SERVICES. NO AGENT OF MONITAUR IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF MONITAUR AS SET FORTH HEREIN.

5. TERM AND TERMINATION.

5.1 **Agreement Term.** This Agreement shall become effective on the Effective Date and shall continue in full force and effect for Subscription Period, provided that this Agreement shall remain in effect after the Subscription Period for so long as there is an active Order Form then in effect, unless sooner terminated pursuant to Section 5.2. Each Order Form shall automatically renew for additional one-year periods, except as set forth in Section 5.2.

5.2 **Termination for Convenience; Non-renewal.** Either Party may terminate this Agreement effective as of the end of the applicable Subscription Period for any or no reason upon written notice to the other Party given at least ninety (90) days prior to end of the then-current Subscription Period. Either Party may prevent an Order Form from automatically renewing for a successive one (1) year period by providing written notice to the other Party at least ninety (90) days prior to the end of the then-current Subscription Period.

5.3 **Survival.** Upon the expiration or termination of this Agreement for any reason, all terms and conditions of this Agreement shall terminate except that Sections 1, 3, 5.3, 6, 7, 8, 9, and 10 shall survive such expiration or termination according to their respective terms.

6. CONFIDENTIALITY.

6.1 **Confidential Information.** "Confidential Information" means any and all non-public information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is marked confidential and proprietary, or that the

Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (i) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (ii) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; (iii) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business; and (iv) the terms of this Agreement and any Order Forms. Confidential Information of Monitaur shall include the Monitaur Platform, Monitaur SDK's and Services. Confidential Information of Client shall include the Transaction Data, Client Information, Client Model Information, and Results. Confidential Information also includes all summaries and abstracts of Confidential Information.

6.2 Non-Disclosure. Each Party acknowledges that during the performance of this Agreement, it may obtain the Confidential Information of the other Party. The Receiving Party shall, at all times, both during the Subscription Period and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under the terms of this Agreement. Each Party agrees to secure and protect the other Party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such Party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its directors, officers, employees, affiliates or other agents who are permitted access to the other Party's Confidential Information to satisfy its obligations under this Section. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its directors, officers, employees, affiliates, and agents who need access to such Confidential Information in order to affect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement. The Receiving Party shall be responsible for all use or disclosure of Confidential Information of any third party to which it discloses the Disclosing Party's Confidential Information.

6.3 Exceptions to Confidential Information. The obligations set forth in Section 6.2 (Non-Disclosure) shall not apply to information which: (i) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) was developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information; or (iii) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

6.4 Effect of Termination. Upon expiration or termination of this Agreement, each Party shall, upon written request, return or destroy (and upon request certify to such deletion) all of the other Party's Confidential Information in its possession, except as permitted in Section 7. Notwithstanding the foregoing or anything to the contrary herein, either Party may retain (a) Confidential Information stored on its computer systems, e-mails, or other forms of electronic information retention in accordance with its bona fide document retention policies and procedures; and (b) Confidential Information required to be retained for regulatory, legal and compliance purposes, subject to the confidentiality and other obligations contained herein.

7. PROPRIETARY RIGHTS.

7.1 **Ownership.** Client acknowledges that the Monitaur Platform, Monitaur SDK's, the Services, and all ideas, concepts and methodologies developed while providing, and related to, the Services, and all Intellectual Property Rights therein, are the sole and exclusive property of Monitaur and its licensors. Monitaur acknowledges that the Client System, Client Information, Client Models, Client Model Information, Results, Transaction Data, and all Intellectual Property Rights therein, are the sole and exclusive property of Client and its licensors. Each Party retains all other rights not expressly granted in this Agreement.

7.2 **Monitaur Developments.** All inventions, works of authorship and developments (including but not limited to all ideas, concepts and methodologies developed while providing Services) conceived, created, written, or generated by or on behalf of Monitaur, whether solely or jointly, including without limitation, in connection with Monitaur's performance of the Services hereunder, ("**Monitaur Developments**") including all Intellectual Property Rights therein, shall be the sole and exclusive property of Monitaur.

7.3 **License to Client Information.** During the Subscription Term, Client grants to Monitaur a royalty-free, non-exclusive, revocable, limited right and license to access and use the Client Information (a) in order to provide the Services to Client and/or the User; (b) to analyze and improve the Monitaur Platform and the Services; and/or (c) to compile and use aggregate or de-identified data, statistics, measurements or other metrics derived from Client Information (including in combination with the aggregate or de-identified customer data of other Monitaur customers) for its own purposes. Aggregate or de-identified data means data that does not identify Client or any individual or entity.

7.4 **Disclosure of Client Information.** Monitaur shall not disclose Client Information to third parties, except: (i) as necessary to provide the Services to Client; (ii) to Monitaur's service providers who are not permitted to use such data except on behalf of Monitaur; (iii) as required by law or to comply with legal process; (iv) to protect and defend the rights or property of Monitaur, including as evidence in litigation between the Parties; (v) to troubleshoot problems with the Services; (vi) to any successor in interest, including as part of a merger, acquisition or transfer of assets, or as part of a bankruptcy proceeding; or (vii) in aggregate or de-identified form.

7.5 **Usage Data.** Notwithstanding anything else in the Agreement or otherwise, Monitaur may (a) monitor use of the Services and Monitaur Platform, and (b) collect data and information related to Client Information and use of the Services, in an aggregate or de-identified manner (the "Use Data"), including to compile statistical and performance information related to the provision and operation of the Monitaur Platform and Services. Client agrees that Monitaur may use such Use Data to the extent and in the manner required by applicable law or regulation and/or for purposes of data gathering, analysis, service enhancement, provided that such Use Data does not identify Client or Client's Confidential Information. Except for any Client Confidential Information contained therein, Monitaur retains all Intellectual Property Rights in such Use Data.

7.6 **Client Trademarks.** Client grants Monitaur a non-exclusive license to use Client's logos and name ("**Client Trademarks**") in connection with the provision of the Services and for Monitaur to disclose, in print, electronic and oral form, that Client is a client of Monitaur. All goodwill arising from the use of the Client Trademarks under this Agreement shall inure to Client. Client agrees to provide Monitaur with Client's logos in a common high-resolution electronic format from time to time along with the name(s) of the Client which Client authorizes Monitaur to use as a Client Trademark.

7.7 **Limited Feedback License.** Client hereby grants to Monitaur, at no charge, a non-exclusive, royalty-free, worldwide, transferable, sublicensable (through one or more tiers), perpetual, irrevocable license in and to suggestions, comments and other forms of feedback ("**Feedback**") regarding the Monitaur Platform, Monitaur SDK's, Services, and Monitaur Developments provided by or on behalf of Client to Monitaur, including Feedback regarding features, usability and use, and bug reports, to reproduce, perform, display, create derivative works of the Feedback and distribute such Feedback and/or derivative works in the Monitaur Platform or any other products or Services. Feedback is provided "as is" without warranty of any kind and shall not include any Confidential Information of Client.

8. INDEMNIFICATION.

8.1 **By Monitaur.** Monitaur shall defend, indemnify and hold Client, its Affiliates and their respective directors, officers, employees, suppliers, agents, successors, and assigns harmless from and against all third party liabilities, losses, costs, expenses, (including reasonable attorney's fees) and damages, in each case as awarded to a third party by a court of competent jurisdiction or in a settlement approved by Monitaur relating to or arising from or in connection with a claim alleging that Client's use of any of the Monitaur Platform, SDK's and Services in accordance with the terms of this Agreement, infringes or misappropriates the intellectual property or trade secrets of any third party; provided that Monitaur shall not be responsible for any such claims arising from: (i) Client Information, (ii) Client's combination of the Monitaur Platform, Monitaur SDK's, Services or Results with any other products, services, data or processes which were not supplied by Monitaur provided the alleged infringement would not have occurred but for such combination, (iii) modification of the Monitaur Platform, Monitaur SDK's, Services or Results by a party other than Monitaur or its authorized contractors; (iv) use of the Monitaur Platform, Monitaur SDK's, Services or Results in violation of this Agreement or the Documentation if the infringement would not have arisen but for such violation; (v) failure to install an update that would have avoided the infringement provided that Monitaur made the update available to Client for free and with notice that it was provided to avoid an infringement. In the event any component of the Monitaur Platform, SDK's and Services, or Client's or its Users' use thereof, is, or in Monitaur's opinion is likely to become, subject to an infringement claim, Monitaur shall, at its option and expense (a) procure for Client the right to continue using the Monitaur Platform, SDK's and Services; (b) replace the affected component of the Monitaur Platform, SDK's or Services with a non-infringing component of substantially similar functionality, or (c) if (a) and (b) are not reasonably feasible, terminate the Agreement and refund to Client any prepaid fees for the affected component on a prorated basis. The foregoing represents Client's sole and exclusive remedy related thereto.

8.2 **By Client.** Client shall defend, indemnify and hold Monitaur, its Affiliates and their respective directors, officers, employees, suppliers, agents, successors, and assigns harmless from and against all third party liabilities, losses, reasonable and actual costs and expenses (including reasonable attorney's fees) and damages, in each case as awarded to a third party by a court of competent jurisdiction or in a settlement approved by Client in writing arising from or in connection with Client's use of the Monitaur Platform, Services and Results hereunder, and with respect to Monitaur's use of Client's System, Client's Information, Client's Models, Client's Model Information, Results, and Transaction Data associated with Monitaur's provision of Services, except to the extent Monitaur would be obligated to indemnify Client from such claim, liabilities, losses, costs, expenses or damages pursuant to Section 8.1 had such claim been brought against Client directly; provided that Client shall not be responsible for any such claims arising from Monitaur's gross negligence or willful misconduct.

8.3 **Procedure.** A Party's obligations to indemnify the other Party with respect to any third party claim, action or proceeding shall be conditioned upon the indemnified Party: (i) providing the indemnifying Party with prompt written notice of such claim, action or proceeding, provided that any failure to give or delay in giving notice shall only relieve the indemnifying Party of its obligations only to the extent it materially prejudices the indemnifying Party's ability to defend the applicable claim; (ii) permitting the indemnifying Party to assume and solely control the defense of such claim, action or proceeding and all related settlement negotiations, with counsel chosen by the indemnifying Party and approved of by the indemnified Party (such approval not to be unreasonably withheld or delayed), and (iii) cooperating at the indemnifying Party's request and expense with the defense or settlement of such claim, action or proceeding which cooperation shall include providing reasonable assistance and information. The indemnifying Party will not enter into any settlement or compromise with respect to an indemnified claim without the prior written consent of the indemnified Party (which consent will not be unreasonably withheld or delayed), unless such settlement or compromise is limited to the indemnifying Party's payment of monetary damages and (for the avoidance of doubt) does not obligate the indemnified Party to any affirmative obligation, including any admission of wrongdoing. No indemnified Party shall enter into any settlement agreement for which it will seek indemnification under this Agreement from the indemnifying Party without the prior written consent of the indemnifying Party which shall not be unreasonably withheld. Nothing herein shall restrict the right of a Party to participate in a claim, action or proceeding through its own counsel and at its own expense.

9. LIMITATIONS OF LIABILITY.

9.1 **Disclaimer.** EXCEPT AS SET FORTH IN SECTION 9.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

9.2 **Limitation.** EXCEPT AS SET FORTH IN SECTION 9.3, THE MAXIMUM LIABILITY OF EACH PARTY TO THE OTHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING FROM BREACH OF CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE TO SUCH PARTY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE APPLICABLE CLAIM.

9.3 **Exceptions.** The Parties agree that (i) the limitations of this Section 9 shall not limit the Parties' payment obligations hereunder, each Party's indemnification obligations under Section 8, Client's breach of Section 2 ("Monitaur Platform and Services") or damages arising from a breach of confidentiality under Section 6, a Party's gross negligence or willful misconduct, and (ii) the limitations specified in Section 9.1 and Section 9.2 shall survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose. Client acknowledges that Monitaur has set the Fees and entered into this Agreement in reliance on the disclaimers of warranty and the limitations of liability set forth in this Agreement and that the same forms an essential basis of the bargain between the Parties.

10. MISCELLANEOUS.

10.1 **Independent Status of Parties.** Each Party shall act as an independent contractor and shall not bind nor attempt to bind the other Party to any contract, or any performance of obligations outside of this Agreement. Nothing contained or done under this Agreement shall be interpreted as constituting either Party as the agent of the other in any sense of the term whatsoever unless expressly so stated.

10.2 **Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles. For determination of any and all disputes arising out or in connection with this Agreement, Client and Monitaur each submit to the exclusive jurisdiction of the competent court(s) located in the Commonwealth of Massachusetts.

10.3 **Notices.** All notices, instructions and other communications hereunder or in connection herewith shall be in writing and shall be (a) delivered personally, (b) sent by registered or certified mail, return receipt requested, postage prepaid, (c) sent via a reputable nationwide overnight courier service, or (d) sent by e-mail to a known e-mail address of the other Party, in each case to an address first set forth in this Agreement or otherwise provided in writing by the applicable Party.

10.4 **Entire Agreement.** This Agreement contains the full understanding of the Parties with respect to the subject matter hereof and supersedes all prior understandings and writings relating thereto. No waiver, alteration, or modification of any of the provisions hereof shall be binding unless made in writing and signed by authorized representatives of the Parties.

10.5 **Headings.** The headings contained in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

10.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provision shall not be affected.

10.7 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

10.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of such together shall constitute one and the same instrument.

10.9 **Construction.** Each of the Parties acknowledges that they and their counsel have had opportunity to review this Agreement and, the Parties agree that any rule of construction that any ambiguity shall be construed against the drafter of this Agreement shall not apply in interpreting the provisions of this Agreement.

10.10 **Waiver.** Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

| | |
|---|--|
| CLIENT: Client Legal Name: _____ | MONITAU, INC. |
| By: _____ | By: _____ |
| Name: _____ Title: _____ Date: _____ Address: _____ _____ | Name: Anthony Habayeb _____ Title: CEO _____ Date: _____ |