

Monet Terms of Service

These Monet Terms of Service (the "Agreement") are entered into and effective as of the earlier of the date you accept this Agreement or the contract start date for any valid Order Form, by and between Monet Software, Inc., a California corporation with offices located at 11812 San Vicente Blvd, Suite 605, Los Angeles, California 90049 ("Monet"), and the entity or organization for which you are accepting this Agreement, and Affiliates of that entity or organization ("You" and "Your"). "You" and "Your" also means an individual who uses a Service (i.e., a User).

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR A PROPOSAL OR ORDER FORM FOR THE SERVICES, OR BY USING THE SERVICES (WHICH WILL CONSTITUTE YOUR ACCEPTANCE OF THIS AGREEMENT), YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY ACCEPTING YOUR ORDER FORM OR PROVIDING SERVICES TO YOU, MONET AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on February 1, 2018.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means these Terms of Service, all Order Forms and all terms and conditions incorporated herein and therein.

"Documentation" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible via login to the applicable Service.

"Extension" means any phone extension that is enabled by You to use the Service to record audio and/or screen capture images, and for which You have ordered the Service.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, backdoors, worms, time bombs and Trojan horses.

"Non-Monet Applications" means a Web-based or offline software application that is provided by You or a third party and interoperates with the Service, including, for example, an application that is developed by or for You.

"Order Form" means an ordering document (including any electronic form) specifying the Services to be provided hereunder that is entered into between You and Us, including any addenda and supplements thereto.

"Services" means the products and services that are ordered by You under an Order Form, or ordered by a reseller for You, and made available by Us.

"User" means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password.

"We," "Us" or "Our" means Monet.

"Your Data" means electronic data and information submitted by or for You to the Services or collected and processed by or for You using the Services.

2. OUR RESPONSIBILITIES

2.1. Provision of Services. We will provide the Services in an Order Form, or ordered by a reseller for You, in accordance with the terms and conditions of this Agreement.

2.2. Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

2.3. Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

2.4 Standard Support. During Our standard support hours of 8 a.m. to 8 p.m. Eastern Time, We will make commercially reasonable efforts to provide You with immediate telephone or email-based access to support personnel. Our support personnel will assist You with support, including by attempting to recreate issues described by You and diagnosing, repairing, testing and placing into production fixes to such defects that We can reasonably affect. Support will also include enhancement to the Services that We make generally available from time to time. We will provide You with access to troubleshooting tools, frequently asked questions and other materials that We make generally available from time to time. We will be excused from the performance of any of Our obligations under this Section 2 upon any uncured material breach by You of this Agreement, including any failure by You to meet payment obligations to Us.

2.5. **Prioritizing Issues.** We will work cooperatively with You to determine the severity of each issue and We, at Our sole discretion, will assign a priority code of 1, 2 or 3 to each issue. Priority 1 issues are major production issues directly caused by the Services that prevent or significantly impair Your use of the Services as intended in support of Your normal business practices. Within 24 hours of receipt of written notification by You describing such an issue, We will acknowledge receipt of your notification and commence Our assessment and remediation of such issues. Priority 2 issues are deviations from the Documentation that do not materially impact Your use of the Services but may cause interruption of service for certain functions, screens or processes, or cause inconvenience for You. Within 48 hours of receipt of written notification by You describing such an issue, We will acknowledge receipt of Your notification and commence Our assessment and remediation of such issues. Priority 2 issues may be resolved by releasing repairs to such issues in future Upgrades of the Services. Priority 3 issues include cosmetic inaccuracies in the Services, minor deviations from the Documentation and all other issues that do not affect the operation of the Services or the integrity of the data. Priority 3 issues will be assessed and remediated by Us at Our convenience, provided that We are not obligated to remediate Priority 3 issues. Priority 3 issues may be resolved by releasing repairs to such issues in future Upgrades of the Services. You agree to provide all information in written form that We may deem necessary to recreate and/or troubleshoot any issue.

3. USE OF SERVICES

3.1. **Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the then-current subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the pre-existing subscriptions.

3.2. **Usage Limits.** Services are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form (or order between You and the reseller) refers to Users and/or Extensions, and the Service may not be accessed by more than that number of Users and/or Extensions, (b) a User's user identification or password may not be shared with any other individual, and (c) a User's user identification may be reassigned only to a new individual replacing one who no longer requires ongoing use of the Service. We may audit Your use of the Services for compliance with the terms of this Agreement. If You exceed a contractual usage limit, We may charge You (in Our sole discretion) for, and You will pay Us for, all use of the Service in excess of the limit for each month in which Your use exceeds the contractual usage limit, in accordance with Section 5.2 (Invoicing and Payment). For clarity, We will charge You for the additional Users and/or Extensions based on the duration and quantity of Your excess use, as determined in Our reasonable discretion. For further clarity, We will charge You for the entire month for each month in which Your use exceeds the contractual usage limit at any time during that month. Users and/or Extensions that exceed the contractual usage limit will be charged an additional 10% administration fee. If You do not purchase subscriptions for additional Users and/or Extensions commensurate with Your excess use within 30 days after We notify You that You are using the Service in excess of Your contractual rights, and You continue to use the Service in excess of Your contractual rights, You will be deemed to have purchased subscriptions for the additional Users and/or Extensions commensurate with Your excess use, and We will charge You (in Our sole discretion) for, and You will pay us for, subscriptions for such Users and/or Extensions for the remainder of the

subscription term in Your Order Form and any renewal term. Our right to charge You for use in excess of Your contractual rights does not limit Our other rights and remedies in this Agreement, at law and in equity.

3.3. Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (d) be responsible for all use of Your account, even by unauthorized persons, unless such unauthorized use would have been prevented if We had complied with our security obligations in this Agreement, (e) use Services only in accordance with the Documentation and applicable laws and government regulations, and (f) comply with terms of service of Non-Monet Applications with which You use Services.

3.4. Usage Restrictions. Your right to use the Services is limited, non-exclusive, non-transferable (except as permitted under Section 14.4) and non-sublicensable. You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than You, (b) sell, resell, license, sublicense, distribute, modify, adapt, create a derivative work from, translate, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service in violation of the law or to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (j) remove, cover or obscure any proprietary notice on a Service, (k) access any Service in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law).

3.5. Equipment, Software, Services and Configurations. You are responsible for procuring and maintaining, solely at Your expense, all telecommunications, networking and other equipment, software and services necessary to use the Services. You are also responsible for achieving and maintaining, solely at Your expense, all firewall settings and other configurations necessary to use the Services. All equipment, software and services must meet Monet's system and configuration requirements, which are stated in Your Order Form or, if not stated in Your Order Form, available upon request. You agree to make remotely available to Monet personnel equipment, software and services that meet Monet's system and configuration requirements to enable Monet to collect data from and transmit data to Your telecommunications, networking and other equipment, software and services in order to record calls and media, to feed required data to the Services, and to otherwise implement and provide You with the Services. You agree that We are not responsible for any failure of such equipment, software or service or any compromise of data transmitted across computer networks not owned or operated by Us or across telecommunications facilities, including the Internet.

4. NON-MONET PROVIDERS

4.1. Integration with Non-Monet Applications. The Services may contain features designed to interoperate with Non-Monet Applications. To use such features, You may be required to obtain access to Non-Monet Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-Monet Applications. If the provider of a Non-Monet Application ceases to make the Non-Monet Application available for interoperation with the corresponding Service features, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

5. FEES AND PAYMENT FOR SERVICES

5.1. Fees. You will pay all fees specified in Order Forms and all other fees agreed to. Except as otherwise specified herein or in an Order Form, (a) payment obligations are non-cancelable and fees paid are non-refundable, and (b) quantities purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. We may bill You for, and You will pay for, the Services in advance, either annually or in accordance with any different billing frequency and other terms stated in the applicable Order Form. We may bill You for excess use of the Services immediately upon discovery, and We may bill You for additional full subscriptions as provided in Section 3.2 (Usage Limits). Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information. If requested by Us, You will pay Us by electronic funds transfer through the Automated Clearing House (ACH) network. Your obligation to pay is not conditioned on Your issuance of a purchase order to Us; if You agree to an Order Form, You will be obligated to pay for the Services in that Order Form.

5.3. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owed by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until all such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, in accordance with Section 13.1 (Manner of Giving Notice), before suspending services to You.

5.5. Payment Disputes. We will not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments

of any nature, including, for example, value-added, sales, excise, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.6 (Taxes), We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

5.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

5.8 Users. If You are an individual User, your employer or contractor is responsible for payment for the Service(s).

5.9 Purchases from Resellers. If You purchase Services from a Monet reseller, Your pricing and payment terms will be those agreed upon between the reseller and You. The reseller will provide any discounts, refunds or credits to which You are entitled; Monet will not be obligated to provide discounts, refunds or credits directly to You. Any fees, taxes or interest that We are permitted to charge You hereunder may be charged by the reseller. Monet will not be liable for the acts or omissions of the reseller. You agree to pay the reseller per the terms established between You and the reseller. If the reseller becomes bankrupt, ceases doing business or the like, or Your agreement with the reseller terminates, You will be obligated to pay Monet directly to continue to use or receive the Services.

6. PROPRIETARY RIGHTS AND LICENSES

6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services, including all of Our/their related intellectual property rights. We will be the sole owner of any and all custom code and training materials created or developed for You under this Agreement. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. License by You to Host Your Data and Applications. You grant Us and Our Affiliates a worldwide, limited term, non-exclusive, transferable, sublicensable license to host, copy, transmit and display Your Data, and any applications and program code created by or for You, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-Monet Application or program code.

6.3. License by You to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You (including Users) relating to the operation of the Services.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. "Confidential Information" means all information

disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, 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. Your Confidential Information includes Your Data; Our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement (including the terms and conditions of Order Forms, such as pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Our Confidential Information includes information related to the Services provided by a Monet reseller to You. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, as shown by its records, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party, as shown by its records.

7.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, agents, resellers and contractors who need that access for purposes consistent with this Agreement and who are bound by obligations no less stringent than those herein. Neither party will disclose the terms of this Agreement to any third party other than its Affiliates, resellers, legal counsel and accountants, or to a potential acquirer for due diligence provided that the potential acquirer is obligated to keep the terms confidential and is not a direct competitor of the Disclosing Party, without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants, or to a potential acquirer, will remain responsible for such Affiliate’s, legal counsel’s, accountant’s or potential acquirer’s compliance with this Section 7.2 (Protection of Confidential Information).

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled to do so by law or the rules of a stock exchange upon which its shares are traded, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7.4 Our Communications. Your Data includes the names and email addresses of Your Users. Notwithstanding anything in this Agreement to the contrary, You agree that We may use such names and email addresses to send Your administrative Users communications (such as newsletters and service announcements) regarding the Services and other services and products. In addition, You agree that We may cause such communications to appear within the Services to Your administrative Users. Our communications may contain advertisements or solicitations regarding new features, services or products, and You consent, on behalf of Your

administrative Users, to receive such communications.

8. SERVICE AVAILABILITY

We will make the Service available to You 99% of the time in each calendar month, and We will provide You with one of the following credits in the event that the Service is not available 99% of the time in a calendar month:

Availability	Credit (% of monthly subscription fee for Service)
98%-98.99%	10%
97%-97.99%	20%
<97%	30%

The Service is available if substantially all of the functionality can be accessed for normal use. The Service will not be considered unavailable for either of the following reasons: (a) maintenance (repairs, updates and upgrades) scheduled at least 12 hours in advance and held between the hours of 10 p.m. and 5 a.m. Pacific Time, Monday through Friday, and anytime on the weekends or official holidays in California, United States; or (b) causes beyond the control of Monet, including Your error, Your misconduct, Your failure to meet the system requirements, denial of service attacks or other criminal activity, or telecommunications or Internet service slowdowns or outages. Monet may send out scheduled maintenance notices via email or Monet may post such notices on the Service; in either case, You will be deemed to have received notice of the schedule maintenance.

You must contact Monet if You experience any unavailability of the Service and provide details about the unavailability. You will not be entitled to any credit if You do not report the unavailability to Monet within thirty (30) days after such unavailability occurs. All calculations of unavailability will be based on Monet's system tracking tools. Monet or Your Monet reseller will apply any credit towards Your next invoice after Monet determines a credit is due. You are not entitled to cash payment of any credit; all credits will terminate upon the expiration or termination of this Agreement. Credits are based only on the subscription fee paid for the software Service, not any professional Services. The receipt of credits will be Your only remedy for any unavailability of the Service.

9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1. Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2. Our Warranties. We warrant that (a) We will take the safeguards for protection of the security Your Data described in the Documentation, (b) the Services will contain the functionality described in the applicable Documentation in all material respects, and (c) We will not materially decrease the functionality or security of the Services during a subscription term. For any breach of an above warranty, Your exclusive remedies and Our sole liabilities are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3. Your Warranties. You warrant that (a) You have the authority and right to provide Your Data

to Us for Our use in providing the Services and as otherwise described herein, and (b) You will comply with all laws applicable to Your use of the Services.

9.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You without Your written consent unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from a Non-Monet Application or Your breach of this Agreement.

10.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service in breach of this Agreement, infringes or misappropriates such third party's intellectual property, personality, privacy or contractual rights, or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. EXCEPT FOR ANY BREACH OF CONFIDENTIALITY OBLIGATIONS AND WITHOUT LIMITING EACH PARTY'S DEFENSE OR INDEMNIFICATION OBLIGATIONS, NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU FOR SUBSCRIPTION FEES HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU FOR SUBSCRIPTION FEES HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR SERVICES).

11.2. Exclusion of Consequential and Related Damages. EXCEPT FOR ANY BREACH OF CONFIDENTIALITY OBLIGATIONS AND WITHOUT LIMITING EACH PARTY'S DEFENSE OR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11.3. Application of Limitations. The limitations and disclaimers in Sections 11.1 (Limitation of Liability) and 10.2 (Exclusion of Consequential and Related Damages) will apply even if the party is advised of the possibility of such damages or liability and even if a remedy fails of its essential purpose.

12. TERM AND TERMINATION

12.1. Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

12.2. Term of Subscriptions. The term of each subscription shall be as specified in the applicable Order Form (or order between You and the reseller). Except as otherwise specified in an Order Form (or order between You and the reseller), subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other written notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 120 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter. Any such pricing increase will not exceed 10% of the pricing for the applicable Service in the immediately prior subscription term, unless the pricing in the prior term was designated in the relevant Order Form as promotional or one-time.

12.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any

other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We or Our reseller will refund You any prepaid fees covering the remainder of the term of all Order Forms (or order between You and the reseller) after the effective date of termination, which will be Your only remedy. If this Agreement is terminated by Us in accordance with Section 12.3 (Termination), You will pay any unpaid fees covering the remainder of the term of all Order Forms (or order between You and the reseller). In no event will termination relieve You of Your obligation to pay any fees payable to Us or Our reseller for the period prior to the effective date of termination.

12.5. Portability and Deletion of Your Data. Upon written request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

12.6. Surviving Provisions. Sections 5 (Fees and Payment for Services), 6 (Proprietary Rights and Licenses), 7 (Confidentiality), 8 (Service Availability), 9.4 (Disclaimers), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Portability and Deletion of Your Data), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) will survive any termination or expiration of this Agreement in perpetuity, unless expressly stated otherwise in the section.

13. NOTICES, GOVERNING LAW AND JURISDICTION

13.1. Manner of Giving Notice. You agree to provide Us with Your e-mail addresses, to promptly provide Us with any changes to such, and to accept notices to You addressed to the contact designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given and received upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of an indemnifiable claim). Your notice to Us of non-renewal of this Agreement shall be sent to billing@monetsoftware.com. All other notices to Us, may be sent to legal@monetsoftware.com.

13.2. Agreement to Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California and any controlling U.S. federal law, regardless of any applicable conflict of laws rules. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement shall be filed exclusively in a state or federal court located in Los Angeles, California. Each party waives any objection to such courts based on lack of personal jurisdiction, improper venue or inconvenient forum. The foregoing limitation on the forum and venue does not apply to any claim related to the protection of a party's Confidential Information or intellectual property rights.

13.3. Injunctive Relief. A party's breach or threatened breach of this Agreement related to the other party's Confidential Information or intellectual property rights will cause such other party irreparable harm for which the recovery of money damages would be inadequate. Therefore, in the case of a party's breach or threatened breach of this Agreement related to the other party's Confidential Information or intellectual property rights, the other party will be entitled to obtain injunctive relief, without the need to post a bond or prove actual monetary damages, to protect its rights under this Agreement in addition to any and all remedies available at law.

14. GENERAL PROVISIONS

14.1. Export Compliance. The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

14.2. Anti-Corruption. You represent that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our or Our reseller's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at legal@monetsoftware.com.

14.3. Entire Agreement and Order of Precedence. This Agreement is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

14.4. Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, (i) either party may assign its rights and delegate its obligations under this Agreement in their entirety (including all Order Forms), without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, and (ii) Monet may assign rights and delegate obligations hereunder to its reseller.

14.5. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.6. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be reformed to a term that is enforceable and most nearly captures the parties' intent, or, if that is impermissible, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

14.8. Construction. Each party waives any right to have the Agreement construed against the drafter. The use of "include", "includes" and "including" in this Agreement is illustrative and not exhaustive.

14.9. Government Rights. The Services and Documentation are "commercial computer software" or "commercial computer software documentation" as those terms are defined in 48 C.F.R. 252.227-7014(a)(1) (2007) and 252.227-7014(a)(5) (2007). The U.S. Government's rights with respect to the Services and Documentation are limited by this Agreement pursuant to FAR § 12.212 (Computer Software) (1995) and 12.211 (Technical Data) (1995) and/or DFAR 227.7202-3, as applicable. As such, the Services and Documentation are being licensed to the U.S. Government end users, if at all: (i) only as "Commercial Items" as that term is defined in FAR 2.101 generally and as incorporated in DFAR 212.102; and (ii) with only those limited rights as are granted to the public pursuant to this Agreement. Under no circumstance will the U.S. Government or its end users be granted any greater rights than are granted to other users as provided for in this Agreement.

14.10. Attorney Fees. You will pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5 (Fees and Payment for Services).

14.11. Remedies Cumulative. Except as stated otherwise herein, remedies provided for in this Agreement are cumulative, not exclusive.

14.12. Electronic Acceptance or Signature. Your electronic acceptance of or electronic signature of this Agreement or any Order Form will have the same effect as Your delivery to Us of a signed physical copy of the document.