

SUBSCRIPTION TERMS AND CONDITIONS

This Subscription Terms and Conditions (“**Agreement**”) is a contract between MontyCloud (“**MontyCloud**,” “**we**,” “**us**”), and you (“**Customer**” or “**You**”) as of the date you click “I Accept” (the “**Effective Date**”). MontyCloud and Customer are sometimes referred to collectively as the “**Parties**” and individually as a “**Party**.”

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS IMPORTANT TERMS GOVERNING YOUR USE OF THE MONTYCLOUD PLATFORM, AND ANY FEEDBACK (DEFINED BELOW) YOU PROVIDE TO US. BY CLICKING "I ACCEPT", USING THE MONTYCLOUD PLATFORM OR BY PROVIDING ANY FEEDBACK TO US, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE MONTYCLOUD PLATFORM OR SUBMIT ANY FEEDBACK TO US.

1. DEFINITIONS

“**Account**” means a single user electronic account permitting Customer or Authorized Users to access and use the MontyCloud Platform.

“**Authorized Users**” are the employees, agents, or other designees who have been identified by Customer and given access to the MontyCloud Platform.

“**Data**” means any data or information input into or collected through or by the MontyCloud Platform.

“**Feedback**” means information and feedback, including, without limitation, questions, comments, suggestions, or the like, regarding the performance, features, functionality and overall Customer experience using the MontyCloud Platform or any of the MontyCloud services.

“**MontyCloud Platform**” means the software as a service provided by MontyCloud under this Agreement, together with any improvements, updates, bug fixes or upgrades thereto.

“**Subscription**” refers to any of the subscription plans for access and use of the MontyCloud Platform on an annual or other periodic basis.

2. RIGHTS AND RESTRICTIONS

- a. **Rights.** MontyCloud hereby grants to Customer a limited, nonexclusive, nontransferable, nonsublicensable, revocable right during the Term to:
 - i. access and use the MontyCloud Platform, its features and any associated solutions that interact with the MontyCloud Platform (the “**MontyCloud Platform**”) as described in the subscription plan; and
 - ii. invite and enable Authorized Users to create and Account and access and use the MontyCloud Platform, as described in the subscription plan, during the Subscription. Customer is responsible for all Authorized Users’ compliance with this Agreement.
- b. **Restrictions.** During the Subscription, Customer may not use the MontyCloud Platform in any manner or for any purpose other than as expressly permitted by this Agreement. Customer may

not publicly display, reverse engineer, modify, benchmark, download or distribute the MontyCloud Platform.

- c. **Changes to the MontyCloud Platform.** MontyCloud may change the MontyCloud Platform from time to time, including changing or removing features or functionality from the MontyCloud Platform. MontyCloud will notify Customer of any discontinuation of the MontyCloud Platform.
- d. **Suspension of the MontyCloud Platform.** MontyCloud may, in its sole discretion, immediately temporarily suspend access to or use of the MontyCloud Platform by Customer or any Authorized User if Customer or any Authorized User violates a material restriction or obligation of Customer or Authorized Users in this Agreement, or if in MontyCloud's reasonable judgment, the MontyCloud Platform or any component thereof is about to suffer a significant threat to security or functionality. MontyCloud will provide advance notice to Customer of any such suspension in MontyCloud's reasonable discretion based on the nature of the circumstances giving rise to the suspension. MontyCloud will use reasonable efforts to re-establish the affected MontyCloud Platform promptly after MontyCloud determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured. MontyCloud may terminate access to the MontyCloud Platform if any of the foregoing causes of suspension are not cured within thirty (30) days after MontyCloud's initial notice thereof. Any suspension or termination by MontyCloud under this Section 2(d) will not excuse Customer from its obligation to make payment(s) under this Agreement. If any Authorized User breaches any term or condition of the Policies, then, in addition to any other remedies available to MontyCloud, MontyCloud will have the right, in its sole discretion, to immediately suspend access to the MontyCloud Platform by the Authorized User who failed to comply with the terms and conditions of the policies. Any suspension under this Section shall remain in effect until the applicable breach, if curable, is cured.

3. TERM AND TERMINATION

- a. **Term.** The term of this Agreement will commence on the Effective Date and will continue for so as long as a Subscription Period is in effect unless and until terminated (the "**Term**").
- b. **Termination.** If either Party commits a material breach of or default under this Agreement, then the other Party may give notice that the breach or default has occurred (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default, and the action required to cure the breach or default) and that the Term will terminate pursuant to this Section 3(b) if the breach or default is not cured within thirty (30) days after receipt of notice (or such later date as may be specified in such notice). If the specified breach or default is not cured within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the Term will terminate. Notwithstanding the foregoing, Customer's failure to pay the Fees in a timely manner constitutes a material breach and must be paid within ten (10) days of MontyCloud's notice to Customer, and if such Fees are not paid, MontyCloud will terminate the Term.
- c. **Effect of Termination.** In the event of any termination of the Term:
 - i. all of Customer's and each Authorized User's rights under this Agreement will immediately terminate, the license granted to Customer in this Agreement will terminate and Customer and all Authorized Users will immediately cease any access or use of the MontyCloud Platform;

- ii. if MontyCloud terminates the Term for material breach by Customer under Section 3(b), then Customer will remain responsible for the remaining balance of the Fees plus related taxes and expenses;
- iii. MontyCloud will permit Customer to access the MontyCloud Platform for thirty (30) days after the Effective Date of termination solely in order to remove any Customer Data from the MontyCloud Platform. Thereafter, MontyCloud will have no obligation to maintain any Customer Data or to forward any Customer Data to Customer or any third party; and
- iv. Sections 1, 2(b), 3(c)(iv), 4, 7 through 11 of this Agreement, together with any other provisions that by their nature are intended to survive, will continue to apply in accordance with their terms.

If Customer terminates the Term for material breach by MontyCloud under Section 3(b), then MontyCloud shall refund to Customer within thirty (30) days of termination any unused pre-paid Fees on a pro rata basis for the remaining Term following the month in which the termination is effective.

4. FEES, PAYMENTS AND TAXES

- a. **MontyCloud Subscriptions.** MontyCloud offers different subscription plans for access and use of the MontyCloud Platform (each, a “**Subscription**”) on an annual or other periodic basis, as identified in Customer’s administrator Account (the “**Subscription Period**”). Customer will pay the fees for its Subscription to the MontyCloud Platform as specified in the applicable Subscription plan (“**Fees**”).
- b. **Cancellation Policy.** CUSTOMER MAY CANCEL ITS SUBSCRIPTION UPON AT LEAST THIRTY (30) DAYS’ BUT NOT MORE THAN FORTY-FIVE (45) DAYS’ NOTICE PRIOR TO THE END OF THE THEN CURRENT SUBSCRIPTION PERIOD BY CONTACTING MONTYCLOUD AT Support@MontyCloud.com - . CUSTOMER WILL BE RESPONSIBLE FOR ALL CHARGES (INCLUDING ANY APPLICABLE TAXES AND OTHER CHARGES) INCURRED WITH RESPECT TO FEES PROCESSED PRIOR TO THE CANCELLATION OF CUSTOMER’S SUBSCRIPTION. WITHOUT LIMITING THE FOREGOING, EXCEPT AS OTHERWISE SET FORTH IN SECTION 4(a) WITH RESPECT TO CUSTOMER’S TERMINATION FOR MONTYCLOUD’S MATERIAL BREACH OF THIS AGREEMENT, CUSTOMER WILL NOT RECEIVE A REFUND FOR ANY PARTIAL SUBSCRIPTION PERIOD OR ANY RENEWAL THAT OCCURS DURING THE THIRTY DAY NOTICE PERIOD.
- c. **Payment Terms.** MontyCloud will issue an invoice for the total amount of the Fees for the entire Subscription Period. Customer will pay invoiced Fees at the address or account for MontyCloud set forth on the applicable invoice within thirty (30) days of Customer’s receipt of the corresponding invoice.
- d. **Pricing and Availability.** All prices are shown in U.S. dollars and applicable taxes and other charges, if any, are additional. MontyCloud reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of each Subscription Period, upon thirty (30) days prior notice to Customer (which may be sent by email). Notwithstanding anything to the contrary in Section 3, if MontyCloud exercises its rights under this Section 4, Customer may

cancel its subscription any time between receipt of the notice and the renewal date of the Subscription.

- e. **Taxes.** Customer is responsible for any sales, duty or other governmental taxes or fees due with respect to Customer's purchase of a Subscription. MontyCloud will collect applicable sales tax if it determines that MontyCloud has a duty to collect sales tax. MontyCloud will present any taxes that it is required to collect at checkout, but note that actual taxes charged may be adjusted from the amount shown at checkout. Several factors may cause this, such as variances between processor programs and changes in tax rates.

5. DATA

In connection with the MontyCloud Platform, MontyCloud will collect Data and use, store, process, and maintain such Data. Customer will own all Data and hereby instructs and authorizes MontyCloud to use Data to provide services to and communicate with Authorized Users about their Accounts and MontyCloud products and services; and to monitor the performance of the MontyCloud Platform, improve the MontyCloud Platform, and to develop new product and service offerings. MontyCloud reserves the right to: (i) disclose Data where required by applicable law or court order and (ii) store Data using third party providers on physical servers in the United States. Customer hereby grants to MontyCloud a perpetual, irrevocable, nonexclusive license to collect, use, store, process and maintain Data via third parties as authorized.

6. FEEDBACK

Customer and Authorized Users may provide MontyCloud with Feedback. Any Feedback that Customer or Authorized Users provide to MontyCloud may or may not be treated confidentially by MontyCloud and will become the sole property of MontyCloud. MontyCloud will own, and Customer and Authorized Users hereby assign to MontyCloud, all exclusive rights, including, without limitation, all intellectual property rights in and to Feedback. MontyCloud will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to Customer or any Authorized Users.

7. CONFIDENTIAL INFORMATION

Confidential Information shall be governed by the Non-Disclosure Agreement, previously signed and agreed to by the Parties. If parties have not executed a Non-Disclosure Agreement, the following terms apply:

- a. You shall not disclose to any person or entity any information about the MontyCloud Platform, the Feedback or other results of your access or use of the MontyCloud Platform or any other confidential information of MontyCloud that becomes known to you.
- b. Your obligation to maintain the confidentiality of such information shall not apply to information that (i) was known to you before receiving such information, or (ii) is received by you from a third party who was legally entitled to make an unrestricted disclosure.

8. DISCLAIMER

THE MONTYCLOUD PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND MAY CONTAIN DEFECTS. THE MONTYCLOUD PLATFORM IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING ANY IMPLIED

WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER SHOULD TAKE APPROPRIATE STEPS TO SAFEGUARD IMPORTANT DATA USED IN CONNECTION WITH OR INPUT INTO THE MONTYCLOUD PLATFORM. CUSTOMER HEREBY WAIVES, RELEASES, AND DISCLAIMS, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE MONTYCLOUD PLATFORM OR RESULT INCLUDING ANY WARRANTY THAT THE MONTYCLOUD PLATFORM WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR CUSTOMER DATA PROVIDED BY CUSTOMER OR A THIRD PARTY WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

IN NO EVENT SHALL THE MONTYCLOUD PARTIES BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE MONTYCLOUD PLATFORM, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN. IN NO EVENT WILL THE AGGREGATE LIABILITY OF MONTYCLOUD, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE GREATER OF (1) THE COMPENSATION PAID BY CUSTOMER TO MONTYCLOUD FOR THE THIRTY (30) DAYS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO LIABILITY OR (2) TEN THOUSAND DOLLARS (\$10,000).

9. INDEMNIFICATION

- a. **By Customer.** Customer will defend, indemnify, and hold harmless the MontyCloud Parties from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party or Authorized User claim concerning:
 - i. Customer's or Authorized Users' unauthorized use of the MontyCloud Platform including, without limitation, any use of the MontyCloud Platform other than as permitted under this Agreement;
 - ii. any Customer Data or other data or content related to Customer or Authorized Users which Customer provides, uploads, or inputs into the MontyCloud Platform; or
 - iii. the combination of the Customer Data with other applications, content or processes.
- b. **By MontyCloud.** MontyCloud will defend, indemnify, and hold harmless Customer from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim that alleges that the MontyCloud Platform infringes, misappropriates, or violates any United States patent, United States trademark or United States copyright or trade secret

10. MISCELLANEOUS

- a. **Independent Contractors.** Each Party is an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligations or

liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party.

- b. **Assignment.** Customer may not assign this Agreement or any right, interest or benefit under this Agreement without prior written consent of MontyCloud. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by any permitted assignee.
- c. **Severability.** If any provision of this Agreement is deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.
- d. **Applicable Law.** This Agreement, and any dispute between the parties related to this Agreement, will be governed by the laws of the State of Washington and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. Each party consents to the exclusive jurisdiction and venue of any federal court located in Seattle, Washington.
- e. **Entire Agreement.** This Agreement, together with any agreement or other policy or guideline referenced in this Agreement, constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.