

Monitizer Terms & Conditions

Norican Technologies

DISA

ItalPresseGauss

Monitizer

SIMPSON

StrikoWestofen

wheelabrator

1. Definitions and interpretation

1.1 Definitions. The capitalized terms not defined in the text of these T&C's shall have the following meanings:

“Contract” means these T&C's, the SOW, the Digital Agreement, the Specification Sheet(s) and the other Appendices.

“Digital Agreement” means the document to be signed by the parties that covers these T&C's and the SOW.

“Effective Date” shall begin on the day of contract signing.

“Hardware” (to the extent covered by this Contract) means the hardware to be provided by Supplier as specified in the SOW and described in the relevant Specification Sheet, including any NoriGates and sensors.

“Initial Term” shall begin on the day of system access.

“Intellectual Property Rights” or **“IPR”** includes patents and rights to inventions, copyright, design right, database right, rights to trademarks and domain names, trade secrets, know-how and confidential information and all other IPR, whether arising by registration (and including applications for registration) or operation of law and whenever, wherever and however arising.

“Monitizer Platform” means MonitizerHub and other Monitizer products specified in the SOW and described in the relevant Specification Sheet [(but excluding any Hardware)].

“Professional Services” means the professional services specified in the SOW.

“Renewal Term” shall begin 12 months each upon the expiry of the Initial Term or any subsequent Renewal Term, unless either party gives at least ninety (90) days written notice to terminate, such notice to take effect at the expiry of the then-current Initial Term or Renewal Term.

“SOW” means the Statement of Work forming part of the Contract

“Specification Sheets” means the detailed specifications of the products and services selected by Client and appended to the SOW.

“Supplier” shall mean the Norican Group entity set out in the SOW.

1.2 To the extent that there is a conflict between any parts of this Contract, the hierarchy for resolving the conflict will be (a) the Digital Agreement, (b) the SOW, (c) these T&C's, and (d) the Appendices (including any Specification Sheet). Clause headings are included for convenience only and do not form part of this Agreement for purposes of interpretation. “including” and similar terms where used in this Contract mean ‘including without limitation’.

1.3 Scope. This Contract applies to the Supplier's provision of the Hardware (to the extent that it is not already covered under any other agreement between the Supplier and the Client), the Monitizer Platform and the associated Professional Services set out in the applicable SOW only. To the extent that there is any conflict between this Contract and any other agreement between the Client and the Supplier, this Contract prevails. This Contract applies to the exclusion of any terms put forward in any way by the Client.

2. Term

The Contract shall commence on the Effective Date and, unless terminated earlier in accordance with its terms, continue until the expiry of the **“Initial Term”** of 12 months. The Contract shall be **automatically renewed** for additional **“Renewal Terms”**.

3. Delivery

- 3.1** Time stipulations in this Contract are estimate only. Supplier shall not be liable for any delay or failure to provide any Services, the Monitizer Platform or Hardware where such delay or failure is due to the Client's failure to fulfil the requirements set out in the relevant Specification Sheet.
- 3.2** All Hardware purchased by Client is supplied as specified in the SOW. Title to such Hardware shall transfer to Client when Supplier receives payment in full of the Fees for such Hardware. Where no Fees are payable, title shall transfer to Client at delivery of the Hardware.

4. The Monitizer Platform

- 4.1 License.** Subject to payment of the applicable license Fees and the provisions of the Contract, for the Term, Supplier hereby grants Client a non-exclusive, non-transferable, non-sublicensable, limited, revocable license for its internal use only.
- 4.2 Software as a Service (“SaaS”).** Where Client licenses the Monitizer Platform as a SaaS solution this Section 4.2 shall apply.
- 4.2.1** During the Term, Supplier shall, subject to payment of the Fees, provide to Client access to the Monitizer Platform via use of a web interface as described in the applicable Specification Sheet.
- 4.2.2** Although Supplier may divulge application programming interfaces to the underlying code of the Monitizer Platform, access and use of the Monitizer Platform shall be web-enabled access only, and nothing in the Contract shall entitle Client to the object or source code of the Monitizer Platform.
- 4.2.3** Unless otherwise specified in the SOW, the Monitizer Platform shall be provided through access to third party data centers licensed by Supplier from Alibaba for Clients located in China and from Amazon Web Services for Clients in all other locations, or other third party data centers of similar standard. Client shall comply with any end user terms notified to it by Supplier or such third party.
- 4.2.4** Supplier shall use all commercially reasonable efforts to make the Monitizer Platform available to Client as described in the applicable Specification Sheet and any reasonable planned and unplanned downtime (of which it shall make reasonable efforts to provide Client with reasonable notice in advance).
- 4.3 Updates and maintenance.** Software upgrades and maintenance to equipment and devices will be carried out as necessary and will only be notified to the Client when the Client’s assistance is necessary.
- 4.4 License Restrictions.** Except as expressly permitted in the Contract, Client shall not, nor allow or authorize any third party to: (i) alter, enhance or otherwise modify or create derivative works of or from the Monitizer Platform; (ii) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the Monitizer Platform; or (iii) where accessing the Monitizer Platform as a SaaS Service, upload, post or transmit into the Monitizer Platform: (a) any unlawful, threatening, abusive, libellous, defamatory, obscene, pornographic, profane, or otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any applicable law, including violations of the IPR or any other rights of a third party; or (b) any information, content or software which is subject to any open source or freeware license or contains a virus, cancelbot, Trojan horse, worm or other harmful component.
- 4.5 On premises license.** Where Client licenses ‘on premises’ the software licensed at [Section 4.2](#) on a subscription basis all parts of this [Section 4](#) will apply other than [4.2.3](#),

- 4.6 Third Party Applications.** To access and use the Monitizer Platform, Client may be required to acquire certain third party applications, including web browsers, hardware and related documentation from third party vendors as described in the applicable Specification Sheet and Client shall be solely responsible for acquiring and maintaining such third party applications, hardware and documentation.
- 4.7 Backups.** Supplier is not responsible for back up of any Client Content under the Contract unless specifically provided as part of a relevant Specification Sheet.

5. Professional services

- 5.1 Completion of installation, etc.** When the Supplier has completed installation of the Monitizer Platform or Hardware (or supervision of the same) as set out in the applicable SOW, Supplier shall notify the Client in writing. The Client shall no later than five (5) calendar days from this notification (the “**acceptance period**”) perform an acceptance inspection and confirm material compliance with the relevant SOW and Specification Sheet(s). Unless the Client has notified the Supplier during the acceptance period of any material errors or has earlier started live use (which will be deemed to be acceptance) the Client shall be deemed to have accepted the Monitizer Platform or Hardware concerned at the end of the acceptance period. Where Client has purchased Professional Services to support and/or maintain its use of the Monitizer Platform, Supplier may, where required from time to time, in person or remotely, attend Client’s premises and/or Client’s cloud iteration of the Monitizer Platform to support Client’s use of the software, including to retrieve Client Property (including Project Transaction Data and Product Performance Data) and perform updates and maintenance to the Monitizer Platform and the Hardware.

6. IPR

- 6.1 Client Property.** As between Client and Supplier, Client shall retain ownership of any content, data or other Client Confidential Information obtained by Supplier from Client or its customers (collectively the “**Client Property**”). Client hereby grants Supplier a nonexclusive, worldwide, royalty-free license during the Term of the Contract to use, copy, display, distribute and modify Client Property solely as provided in the Contract. The Client Property includes the specific transaction data generated in using Monitizer Platform, including any Personal Data, and any Confidential Information that discloses performance data of Client, its products and its product sales (collectively “**Project Transaction Data**”). Supplier does not claim ownership of Project Transaction Data and shall not use such Project Transaction Data except for the purposes set out in the Contract, service improvement, data science and research and development. Notwithstanding the foregoing, Supplier will retain all right, title and interest to all aggregated transactional and performance data related to the use of Monitizer Platform, which Supplier may collect, aggregate, anonymise and otherwise use for its business purposes (including, for software and machine optimization, benchmarking and product marketing purposes) (collectively “**Product Performance Data**”).
- 6.2 Ownership.** Supplier (and its licensors, where applicable) owns all right, title and interest, including all IPR, in and to the Monitizer Platform, Hardware, software and other content and materials used in the provision of the Services. In addition, Client agrees that Supplier (and its licensors, where applicable) will own all right, title and interest in and to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or any other Party relating to the Monitizer Platform, and Client hereby assigns, with full title guarantee, all IPR in such items to Supplier. Client will not take any action that jeopardizes Supplier’s or its licensor’s proprietary rights or acquire any right in any of the foregoing, except (a) the limited license rights specified herein; and (b) title in any Hardware for which title transfers to Client.

7. Indemnity

- 7.1 Supplier Indemnity.** Subject to [Section 7.4](#), Supplier shall defend, indemnify and hold Client, its affiliates, shareholders, directors, officers, employees and agents harmless from any and all damages finally awarded by a court of competent jurisdiction from which no appeal lies resulting from any claim or allegation that the Monitizer Platform as used within the scope of the Contract infringes or misappropriates any IPR. The foregoing indemnity obligations shall not extend to (a) a modification of the Monitizer Platform by anyone other than Supplier (or its authorised contractors); (b) the incorporation into the Monitizer Platform of any information provided by or requested by Client, including any Client Property; (c) the use of a combination of the Monitizer Platform with any third party software or equipment where such combination is the cause of such infringement; or (d) if Client has not adhered to its obligations under or in connection with the Contract. This [Section 7.1](#) states Supplier’s entire liability and Client’s sole remedy for infringement claims.
- 7.2 Opportunity to Cure, etc.** In the event the Monitizer Platform is held or is believed by Supplier to infringe IPR, Supplier is entitled to (a) modify the Monitizer Platform so that it is non-infringing; (b) replace the Monitizer Platform with non-infringing software which is functionally equivalent; (c) obtain a license for Client to continue using the Monitizer Platform as provided herein; or (d) without further liability terminate the Contract by written notice to Client.
- 7.3 Client Indemnity.** Client shall defend, indemnify and hold Supplier, its affiliates, shareholders, directors, officers and employees harmless from any and all third party claims, losses, actions, suits, proceedings or judgements, including costs and reasonable attorney’s fees, incurred by or assessed against such parties resulting, in whole or in part from: (a) any claim or allegations that any Client Property as used within the scope of the Contract infringes or misappropriates any IPR; and (b) use of Monitizer Platform by Client in violation of law or the Contract, and will pay all final judgements awarded on such claims.
- 7.4 Indemnification Procedure.** The indemnified party will (a) give prompt notice of the claim to the indemnifying party; (b) grant sole control of the defence or settlement of the claim or action to the indemnifying party, provided that the indemnifying party appoints competent counsel and has the means to pay for them; and (c) provide reasonable cooperation to the indemnifying party and reasonable assistance in the defense or settlement of the claim, at the indemnifying party’s request and expense. The indemnified party may, at its option, participate in such defense and/ or settlement with its own counsel at its own expense.

8. Warranty and disclaimer

- 8.1 Warranties of each party.** Each party warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 8.2 Client Warranties.** Client warrants that it owns or has obtained all necessary rights in the Client Property and any other materials provided by the Client so that the use of such Client Property or materials by Client or by Supplier, as authorized in the Contract, does not violate any IPR or any other rights of a third party. Client further warrants none of Client's personnel will be persons listed by the U.S. government or any agency thereof as persons with whom U.S. or EU citizens or residents are prohibited from doing business. Client warrants that (a) it will refrain from any conduct that tends to damage the reputation of Supplier or Monitizer Platform; and (b) will make no false or misleading representations or statements concerning Supplier or Monitizer Platform. Client will be solely responsible for any representation, warranties or guarantees made or published concerning Monitizer Platform by Client to extent that such representations, warranties or guarantees are inconsistent with any warranties in the Contract.
- 8.3 Supplier Warranties**
- 8.3.1** Supplier warrants that: (a) the Monitizer Platform and Hardware will operate as described in the Specification Sheets (as amended from time to time) in all material respects; and (b) it shall perform its obligations under this Contract with reasonable skill and care and using competent and appropriately qualified personnel.
- 8.3.2** In the event of any breach of the warranty set out at Section 8.3.1 that is notified to Supplier in writing within 30 days of such breach, Supplier shall use reasonable commercial endeavours to promptly remedy the breach or, if it is unable to do so, Supplier may terminate the Contract and make a refund of a reasonable pro rata portion of the Fees reflecting the non-performance. Such termination and refund shall be Supplier's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty.
- 8.4 Exclusion of Certain Warranties.** The Hardware, Monitizer Platform and Professional Services are provided "as is", "where is" and "as available". Monitizer Platform, the Hardware and the documentation being provided are not warranted by Supplier to be error-free or free from interruption, or vulnerabilities or viruses.
- 8.5 Public Networks.** Client acknowledges and agrees that Supplier does not control the transfer of data over the internet or a public telecommunications network, and accordingly Supplier's obligations set forth in the Contract shall not apply to Client Content while in transit over such networks.

9. Confidentiality

- 9.1 Meaning of "Confidential Information".** In this Agreement, "Confidential Information" means (i) any business or technical information of Client or Supplier, including any budget quotation, any information relating to either party's products, services, marketing plans, business opportunities, trade secrets or personnel, (ii) any information of Client or Supplier that is specifically designated by the disclosing party as confidential or proprietary, and (iii) any information that is known to the receiving party, or should be known to a reasonable person given the facts and circumstances of the disclosure being treated as confidential or proprietary by the disclosing party.
- 9.2 Exclusions.** Confidential Information excludes information that (i) is in or enters the public domain without breach of the Contract, (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party, (iii) the receiving party can demonstrate was developed independently and without use of or reference to the disclosing party's Confidential Information, (iv) the receiving party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, or (v) is aggregated and cannot be identified as the Confidential Information of the disclosing party.
- 9.3 Strict Confidence.** Each party shall maintain the Confidential Information of the other party in strict confidence during the Term and for a period of three (3) years thereafter and shall at all times exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Each party agrees that it shall promptly notify the other party upon discovery of any unauthorized disclosure or use of Confidential Information disclosed by the other party and will reasonably cooperate the other party to regain possession of and terminate any unauthorized use of the Confidential Information that was subject to the breach.
- 9.4 Restriction.** Each party shall use the Confidential Information of the other party only during the Term of the Contract and as expressly permitted herein.
- 9.5 Limited Access.** Each party shall limit the use and access of Confidential Information solely to such party's employees, contractors, and agents (including independent auditors and required government agencies) who have a need to know such information for purpose of conducting the receiving party's business and who are obligated to maintain the confidentiality of and refrain from using such Confidential Information under terms at least as protective as those set forth herein and only after the receiving party has notified such employees and agents that such information is the Confidential Information of the disclosing party.
- 9.6 Required Disclosures and Permitted Uses.** Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party pursuant to the valid order or requirement of a court, provided that (unless prohibited by applicable law) the receiving party first gives reasonable written notice to the disclosing party in order to timely contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, shall, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information.

10. Limitation of liability, etc

- 10.1 Excluded Liability.** In no event shall either party be liable for any: (a) lost profits, opportunities or revenue, (b) loss of business, (c) depletion of goodwill, and/or (d) similar losses, in any cases whether direct or indirect or (e) loss or corruption of data or information, (f) pure economic loss, or (g) for any consequential, incidental, indirect, exemplary, or special damages of any kind or nature whatsoever, suffered by the other party or any third party. Supplier shall not be liable for any damages arising out of or related to (i) the accuracy or completeness of any information provided in Monitizer Platform; or (ii) cost of procurement of substitute; or (iii) any losses, liabilities or claim incurred or arising in connection with the provision by Client of incorrect or misleading information, the acts or omissions of Client, any customer, or contractor, whether suffered by Client or any third party.
- 10.2 Unlimited Liability.** Notwithstanding any other term of this Contract, neither party limits its liability for (a) gross negligence or wilful misconduct, (b) death or personal injury caused by its negligence; (c) fraud or fraudulent misrepresentation; (c) in respect of any express indemnification obligation under this Contract; (d) breach of [Section 12.17](#); (e) (in the case of liability of the Client), Client's breach of [Section 4](#); and (f) any other liability that cannot be limited under applicable law.
- 10.3 Liability Cap.** The total aggregate liability of Supplier to the Client for any and all matters relating to or losses arising in connection with this Contract shall be limited to an amount equal to one hundred per cent (100%) of the Fees paid and payable under the Contract during the twelve month period immediately preceding the date of the event giving rise to the claim. For the avoidance of doubt, the cap on liability in this [Section 10.3](#) is a total aggregate cap and not per incident or annual cap.
- 10.4 Loss of Data.** Without prejudice to the generality of [Section 10.1\(e\)](#), Supplier hereby disclaims, and will not be liable for, any loss of, unauthorized access to or use of, or disclosure of Client Property that is not due to a breach of any provisions of the Contract by Supplier. In such cases, any liability of Supplier shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Client to back-up data on a regular basis according to the state of the art remains unaffected.
- 10.5 Limitation Period.** Unless provided otherwise in the Contract, any and all claims of Client against Supplier shall be subject to a limitation period of one year from the date of accrual of the cause of action and the date on which Client discovered or, absent recklessness of the part of Client, would have discovered the circumstances giving rise to the claim, [except for claims defined in [Section 8.3.2.](#)]

11. Termination

- 11.1** The Contract may be terminated by either party by providing written notice to the other party:
- 11.1.1** upon the material breach by such other party of any of its obligations hereunder, where such breach has not been cured within thirty (30) days after the breaching party has received written notice thereof from non-breaching party;
 - 11.1.2** If such other party (i) becomes unable to pay its debts as they fall due or otherwise insolvent, (ii) passes a resolution or becomes liable to an order for winding up or dissolution, (iii) compounds with its creditors, (iv) has a manager, administrator or encumbrancer appointed over all or any part of its assets or undertakes, (v) take or suffers any similar or analogous action on account of debt in any jurisdiction or (vi) ceases or threatens to cease to carry on business ;
 - 11.1.3** if a Force Majeure Event prevents Supplier from performance of its obligations hereunder for a period of one (1) month.
- 11.2** The Contract may be terminated immediately by Supplier upon written notice and without affecting its other rights if (a) Fees are past due under the Contract for more than sixty (60) days or (b) if Client is at any time in breach of any its obligations at [Section 4](#).
- 11.3** Effect of Termination. Upon any termination or expiration of the Contract: (i) Client will immediately cease the use of Monitizer Platform and Supplier shall immediately cease providing any services; and (ii) Client shall immediately (and no later than thirty (30) days after termination) pay to Supplier all undisputed outstanding unpaid invoices, and, in respect of any products or Services supplied but for which no invoice has been submitted, Supplier may submit an invoice, payable within ten (10) days.

12. General terms

- 12.1 Force Majeure.** In the event of Force Majeure, the party affected will promptly notify the other party in writing and, to the extent that the Force Majeure causes or contributes to that party's failure or delay in performing any obligation, it will be excused performance provided that it uses reasonable commercial efforts to mitigate or work round the effect of the Force Majeure. This clause will not operate to excuse performance by the Client of a payment obligation. For the purposes of [Section 12.1](#) "Force Majeure" includes events, circumstances or causes beyond a party's reasonable control (whether occurring to a party or any of its subcontractors) including strikes, lock-outs or other industrial disputes, failure of a utility service, telecommunications network, the internet or transport, act of God, terrorism, war, riot, civil commotion, cyber-attack or other malicious damage or interference, accident, breakdown of plant or machinery, fire, flood or storm, epidemic or pandemic.
- 12.2 Relief Events.** On the occurrence of a Relief Event, Supplier will notify the Client in writing and will continue to use reasonable commercial efforts to continue to perform but will, notwithstanding any other term of this Contract, be excused from performance of the obligation concerned to the extent that the Relief Event causes or contributes to the failure or delay in performance. For the purposes of [Section 12.2](#), "Relief Event" means (i) any failure by the Client to perform its obligations or any other failure or delay which the Client knew, or reasonably should have known, would have that result; (ii) a Force Majeure event; or (iii) Supplier acting in accordance with an express instruction (including the imposition of a constraint) by the Client.
- 12.3 Waiver.** A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 12.4 Rights and remedies are cumulative.** Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to any rights or remedies provided by law.
- 12.5 Severance.** If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 12.6 Entire agreement.** This Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter. Each Party acknowledges and agrees that (a) in entering into this Contract, it does not rely on any assurance, statement or representation (whether made innocently or negligently) of any person (whether or not a Party) that is not expressly set out in this Contract and that it shall have no remedy in respect of the same; (b) there are no conditions, warranties or other terms except as expressly set out in otherwise (including as to performance, quality, suitability for any particular purpose, freedom from encumbrances, quiet possession or otherwise whatsoever) are hereby expressly negated and excluded.
- 12.7 Assignment, etc.** The Client will not, without the prior written consent of Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract. Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 12.8 Costs.** Except as expressly provided in this Contract, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Contract (and any documents referred to in it).
- 12.9 Relationship.** Nothing in this Contract is intended to, or will be deemed to, establish any partnership, fiduciary relationship or duty, or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.10 Variation.** Except as otherwise provided in this Contract, no variation of this Contract will be effective unless it is in writing and signed by the parties (or their authorised representatives). Supplier may revise this Contract at any time by posting the change on the Supplier's Website. Client is responsible for checking the website regularly. By continuing to access or use the Monitizer Platform or receive any Professional Services after revisions become effective, Client agrees to be bound by the revised Contract. If Client does not agree to the revised Contract terms, the parties shall negotiate the revised Contract terms in good faith.
- 12.11 Third party rights.** This Contract does not confer any rights on any person or party (other than the parties to this Contract and (where applicable) their successors and permitted assigns).
- 12.12 Survival.** Termination of the Contract shall not impair either party's then accrued rights, obligations, liabilities or remedies or affect any term of this Contract that is expressly stated to survive or impliedly survives termination.
- 12.13 Notices.** Any notice under this Contract will be in writing and will be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Contract, or such other address as may have been notified by that party for such purposes. A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post.

12. General terms (cont)

- 12.14 Publicity, etc.** The Client consents to Supplier including the Client's name, trademark and/or logo on Suppliers' website and other promotional materials for marketing purposes. Except as set out in the preceding sentence, neither party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law.
- 12.15 Compliance with laws.** Client will at all time comply with all laws and regulations from time to time applicable to its use of the Monitizer Platform and the Hardware and its activities relating to this Contract.
- 12.16 Data Protection.**
- 12.16.1** Supplier may require the names and business email addresses of Client's authorised users of the Monitizer Platform in order to provide logon credentials, and may, in the course of providing the Services, come into contact with additional business email addresses, password or other similar personal data of Client's personnel, customers or suppliers (collectively, "**Client Personal Data**"). Supplier is the processor and Client is the controller with respect to the Client Personal Data under applicable data protection laws, including the EU General Data Protection Regulation ("EU-GDPR").
- 12.16.2** Client represents that it has all and will maintain all necessary rights and consents to provide Client Personal Data to Supplier for use in accordance with the terms of this Contract. Client agrees that it has collected and shall maintain and handle all personal data (as defined in the EU-GDPR, or any analogous definition under applicable privacy laws) contained in Client Property in compliance with all applicable data privacy and protection laws, rules and regulations. Except as otherwise provided in this Contract, Client shall not make available or accessible to Supplier any personal data or upload such personal data to the Monitizer Platform.
- 12.16.3** Supplier agrees that it will: (a) only use the Client Personal Data in accordance with Client's instructions and in compliance with the Contract; (b) implement appropriate technical and organizational security measures to safeguard Client Personal Data, including to ensure that persons with access to personal data are bound by confidentiality obligations; (c) provide assistance as reasonably requested by Client with respect to Client's obligations under applicable data protection laws (e.g. responding to requests by individuals, providing notice of breaches, consulting with regulators); (d) make available information as reasonable requested by Client to demonstrate Supplier's compliance with its obligations under this Section; and (e) return or destroy (at Client's direction) such Client Personal Data upon request of Client or termination of the Contract.
- 12.16.4** Client specifically authorizes the engagement of Supplier's affiliates and the SaaS hosting provider as sub-processors and generally authorizes the engagement of other third parties as subprocessors as identified by Supplier which may be changed by Supplier from time to time. Supplier shall contractually require any such sub-processors to comply with data protection obligations that are at least as restrictive as those Supplier is required to comply with hereunder.
- 12.17 Export.** Each party shall comply with all export control and economic sanctions laws (collectively, "**Trade Control Laws**") applicable to its performance under the Contract, including the use and transfer of any data software, hardware, technology, other items or services subject to the Contract. Supplier may decline in its sole discretion to engage in any activity under the Contract with any connection to a country subject to comprehensive economic sanctions (including the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan or Syria), or that Supplier otherwise determines could constitute a violation of applicable Trade Control Laws, without creating any liability on its part under the Contract.
- 12.18 Language.** In the event the Contract or any part of it is in a language other than in English, in the case of any conflict or ambiguity the English language version shall prevail.
- 12.19 Governing law, jurisdiction and disputes.** This Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the country of incorporation of the Supplier. The parties irrevocably agree that the courts of that country have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Contract will prevent either party from applying to the courts of any other country for injunctive or other interim relief or for enforcement purposes of any judgment.