

DATE: MAY 17, 2019

BY ACCESSING THE SERVICES, YOU OR THE ENTITY OR COMPANY THAT YOU REPRESENT ("CUSTOMER") ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THESE TERMS OF SERVICE ("AGREEMENT"). CUSTOMER'S USE OF THE SERVICES SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT USE THE SERVICES. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

Activity Monitor agrees to provide Customer access to a current version of the Services on the terms and conditions contained in this Agreement.

## 1. DEFINITIONS

- 1.1. "Documentation" means the user manuals and any other materials in any form or medium made generally available by activity monitor to Customer regarding the proper installation and use of the Software.
- 1.2. "Services" shall mean the employee/ user activity tracking and monitoring coupled with analysis of gathered data, subject to the terms and conditions of this Agreement.
- 1.3. "Software" means each activity monitor software, deployed in the Customer device, together with any and all codes, logic, techniques, software tools, formats, designs, concepts, methods, processes, third-party data, and ideas associated with such computer programs and any and all updates provided by activity monitor.

## 2. SERVICES LICENSE

Activity Monitor grants to Customer a non-exclusive, nontransferable, restricted license to access the Services during the term of this Agreement for the sole purpose of evaluating the Services, and strictly prohibits any commercial or other use thereof for Customer or third parties. No other entity of the Customer shall be allowed access or use of the Services. Customer shall use Services in compliance with activity monitor's Privacy Policy and Acceptable Use Policy.

## 3. CUSTOMER DATA

Activity Monitor hereby acknowledges and agrees that all rights, title and interest in and to data provided by Customer ("Customer Data") are and shall remain the property of Customer and all intellectual property rights in Customer Data are the property of Customer. Customer hereby grants to activity monitor throughout the term of this Agreement, and after the term as necessary for any of

activity monitor's post-termination obligations to Customer, the necessary rights or license to use, cache, and transmit Customer Data via the Services solely as necessary for the purposes of this Agreement. Activity monitor shall at all times maintain the confidentiality of all Customer Data, subject to the ability of activity monitor to share Customer Data with its authorized third party contractors for performance of Services, and shall promptly return all such Customer Data at the request of Customer. In the event of termination or expiration of this Agreement for any reason, Customer shall have complete ownership of the data collected during the time of operation within the organization.

#### 4. TERM AND TERMINATION

The term of this Agreement shall commence upon the Effective Date, and shall remain in effect until expiration or termination as set forth herein. Either party may terminate this Agreement for convenience upon written notice to the other party.

In addition, this Agreement shall automatically terminate upon earliest occurrence of any of the following:

4.1. Purchase by Customer of activity monitor's subscription services; or.

4.2. Violation by Customer of any of the provisions of this Agreement.

#### 5. OWNERSHIP

Activity monitor shall own all right title and interest in and to the Services and Software and all intellectual property rights in the Software and Services are owned by activity monitor and/or its licensors and protected by Intellectual Property Act, No. 36 of 200, other applicable copyright laws, other applicable proprietary rights laws, including but not limited to trade secret laws, and other international treaty provisions. Activity monitor retains ownership of the Software and Services and no rights are granted to the Customer other than a license to use on terms expressly set forth in this Agreement.

#### 6. LIMITATIONS

CUSTOMER ACKNOWLEDGES THAT THE SERVICES AND DOCUMENTATION ARE PROVIDED TO CUSTOMER "AS-IS". ACTIVITY MONITOR MAKES NO EXPRESS OR IMPLIED WARRANTIES AND HEREBY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES REGARDING LOSS OF DATA OR RESULTS TO BE OBTAINED FROM THE SERVICES OR SOFTWARE. NEITHER ACTIVITY MONITOR NOR ITS OFFICERS, ACTIVITY MONITOR'S, DIRECTORS OR EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE FOR (I) ANY LOSS ARISING FROM USE OF THE SERVICES OR DOCUMENTATION OR (II) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE.

## 7. MISCELLANEOUS

This Agreement shall be interpreted in all respects in accordance with the laws of the State of Sri Lanka, including Information and Communication Technology Act of 2003; notwithstanding any conflict of law rules. The obligations and provisions of Sections 5, 6 and 7 shall survive expiration or termination of this Agreement. This Agreement, including any referenced attachments and/ or incorporated documents, constitute the entire understanding of the parties relating to the subject matter hereof and any representation, promise, or condition not contained herein shall not be binding on either party.