

MonitorPoint® User Agreement

This User Agreement is a binding agreement made between Hilton Development Group, Inc. (“HDG” or “Company”) and you, the User (“You”, “Your”, “User” or “Customer”), and governs Your use of Company’s Solution as defined herein according to the terms and conditions set forth below. User acknowledges it has had the opportunity to both review the Agreement and to consult with legal counsel prior to the acceptance of this Agreement. By accessing or using the Solution, You acknowledge that You have read and understand this Agreement, that You accept all of the terms and conditions contained here in full, and that You agree that the terms and conditions shall be fully and legally binding upon the Parties, without the need for need for any further indication of acceptance on Your part (such as by signature, click through or other means of electronic acceptance. Furthermore, by accessing or using the Solution, You represent and warrant that You have the right and authority to enter into this Agreement. This Agreement is effective immediately upon Your completion of creating an Account for the Solution (“Effective Date”).

THE PARTIES HERETO AGREE AS FOLLOWS:

1. RECITALS

- 1.1. WHEREAS HDG has developed a certain Solution for the sole purpose of communicating with the specified Wireless Device(s); and
- 1.2. HDG will provide the Solution in accordance with, and subject to this Agreement; and
- 1.3. User wishes to receive the Solution as it is provided by HDG; and
- 1.4. User wishes to use the Solution for a purpose that is in accordance with and subject to this Agreement.

2. DEFINITIONS

- 2.1. **Account.** “Account” means a unique relationship between User and HDG for the sole purpose of accessing and using the Solution and may include, without limitation, a username, password, first and last name, email address, cellular phone number, and other personally identifiable or billing information.
- 2.2. **Asset.** “Asset” means any individual, vehicle, structure, or other item which User may use the Solution to monitor, locate, or otherwise receive information about.
- 2.3. **Data.** “Data” means information which is being processed by means of equipment operating automatically in response to instructions given for that purpose, and is recorded with the intention that it should be processed by means of such equipment, or is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system. This may include but is not limited to cellular signal values and geographical locations.
- 2.4. **MonitorPoint.** “MonitorPoint” is the brand name of the Solution given by HDG and is a registered trademark (service mark) of HDG.
- 2.5. **Solution.** “Solution” means the software, web-based or native mobile application, and relative components or services thereof which have been developed and are being offered in connection with the purpose of communicating with specific Wireless Devices and may assist in receiving, displaying, or otherwise providing information relative to an Asset.
- 2.6. **Wireless Device.** “Wireless Device” means a hardware component which may generate, send, receive, or otherwise manipulate and transmit data using a cellular or other network that communicates by transmitting signals through the air.

3. USE OF SOLUTION

- 3.1. **Use Right.** During the term and subject to the terms of this Agreement, HDG hereby grants to User a limited, non-exclusive, non-transferable, and revocable right to use the Solution. All rights in and to the Solution not expressly granted herein are reserved to HDG.
- 3.2. **Use Restrictions.** User shall not, directly, indirectly, alone, or with another party, (I) copy, disassemble,

reverse engineer, or decompile the Solution; (II) modify, create derivative works based upon, or translate the Solution; (III) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the Solution in any form to any other party, nor shall User attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. User acknowledges and agrees that HDG shall own all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Solution. Furthermore, any suggestions, enhancement requests, feedback, recommendations, or other information provided by User will be the sole and exclusive property of HDG.

- 3.3. **No Sensitive Information; Security.** User acknowledges and agrees that HDG is not responsible for any sensitive information related to the use of the Solution, including but not limited to protected health information under HIPAA, credit card numbers, financial account numbers, or other similarly-sensitive personal information, and that User assumes all risk arising from the use of any such sensitive information with the Solution, including the risk of any inadvertent disclosure or unauthorized access thereto. User additionally acknowledges and agrees that User is solely responsible for maintaining the security of all usernames, passwords, and electronic devices used to access the Solution.
- 3.4. **User Responsibility.** User acknowledges and agrees that the use of the Solution in connection with monitoring, locating, or otherwise receiving information about individuals, vehicles, structures, or other item (collectively "Asset", as previously defined by this Agreement) does not create any liability of HDG towards such Asset, and does not relieve the User from any such liability, if any. User acknowledges and agrees that the Solution is not a substitute for (I) regular contact with, caregiving, or other means of supervision of any individual, (II) any insurance coverage, (III) maintenance or repairs, or (IV) other actions or obligations which may be required of the User relative to an Asset. User is solely responsible for (I) ensuring the Solution is properly and completely set up as recommended or required by HDG, (II) testing the Solution prior to the first use, (III) testing the Solution regularly, and (IV) contacting HDG to address any functionality questions or concerns.

4. WIRELESS DEVICE

- 4.1. **Compatible Wireless Devices.** User understands that a compatible Wireless Device, purchased from or provided by HDG is required to use the Solution. HDG reserves the right to determine, at its sole discretion, which Wireless Devices will be specified as compatible with the Solution and may, as necessary from time to time, modify the selection of said Wireless Devices.
- 4.2. **Functionality Requirements.** User understands that any battery-powered Wireless Device needs to be recharged on a regular basis and User is solely responsible for ensuring the battery is adequately charged relative to the intended use, and that any Wireless Device requiring an external power source needs to properly connected to an adequate power source. User understands that an active cellular network connection and proper configuration are required for the Wireless Device to function properly and communicate with the Solution. User is solely responsible for ensuring that any and all functionality requirements are completely and correctly satisfied.
- 4.3. **Care of Wireless Device.** User will use the Wireless Device only according to the instructions of HDG, and User assumes and will bear the risk of all loss, damage, or improper care of the Wireless Device without limitation, which may include impairment of the battery life (if applicable) as a result of improper battery charging practices or over-charging.
- 4.4. **Limited Warranty.** Wireless Devices purchased or provided by HDG include a one (1) year limited warranty, which begins on the date of purchase. Said warranty shall cover malfunctions, defects, or other like circumstances which may impede the proper functioning of a Wireless Device. For the avoidance of doubt, poor cellular signal is not covered by this limited warranty, notwithstanding any determination arrived at solely by HDG and only after completely and successfully eliminating any other potential cause for poor cellular signal. At its sole discretion, HDG reserves the right to (I) make a determination of cause, (II) deny coverage under said warranty, (III) repair or replace any Wireless

Device, (IV) impose and charge User for any fees related to a warranty claim, and (V) exercise any rights not expressly implied herein but made available by law. User understands that this warranty does not provide any coverage in any form, or otherwise make HDG liable for any improper care or misuse of a Wireless Device.

5. PRIVACY AND PROPRIETARY RIGHT

- 5.1. **User Privacy.** HDG shall use personally identifiable information of User only for the purpose of providing the services under this Agreement to User. Information may be provided to emergency services. HDG may use aggregated non-personally identifiable information derived from information provided by User, including but not limited to for the purpose of improving the Solution.
- 5.2. **Data Ownership.** HDG shall retain ownership of any all Data produced by the Solution, including but not limited to any Data produced as a result of the User's use of the Solution. HDG reserves any and all right to market, sell, or otherwise transfer Data to any third-party without notice to or consent from User. For the avoidance of doubt, Data shall not include any personally identifiable information of any User; however, HDG may replace such information with another form of unique identifier only to the extent that it not (I) disclose, (II) allude to, or (III) otherwise provide a way to determine any personally identifiable information of any User.
- 5.3. **Intellectual Property.** No license or conveyance of any right under any patent, copyright, mark, trade secret, or any other intellectual property right is granted under this Agreement except the limited rights necessary to carry out the purpose as set forth in this Agreement. Subject to the obligations of this Agreement, neither Party will be precluded from independently developing technology or pursuing business opportunities similar to those covered by this Agreement.
- 5.4. **Required Disclosures.** HDG may, at its sole discretion, disclose any information related to the User and their use of the Solution as required to comply with the binding orders of law enforcement or governmental entities that have jurisdiction over HDG or User or as otherwise required by law, provided that HDG (I) gives the User reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent that compliance with the foregoing would cause HDG to violate a court order or other legal requirement), (II) discloses only such information as is required by the governmental entity or otherwise required by law, and (III) uses its best efforts to obtain confidential treatment for any information so disclosed.

6. PAYMENT OF FEES

- 6.1. **Fees.** User agrees to pay HDG any and all fees related to or arising from their use of the Solution, including but not limited to purchasing a Wireless Device(s), activation fees, subscription plan fees, and other fees imposed in accordance with this Agreement. HDG reserves the right to change the term and price of current subscription plans or offer additional subscription plans, which may occur at any time and without notice.
- 6.2. **Late Payments.** Any and all past due amounts will incur interest at a rate of one percent (1%) per month or the maximum rate permitted by law, whichever is greater. User acknowledges and agrees that any amount due may not be withheld for any reason, and that any withheld payment will be treated as a past due amount. In addition to the imposition of interest, HDG reserves the right to exercise any and all additional remedies available, including but not limited to suspension or termination of User's current or future access to the Solution.
- 6.3. **Taxes, Surcharges, and Other Fees.** User, if applicable, will be responsible for, and promptly pay, all taxes and duties of any kind (including but not limited to sales, use, and withholding taxes) associated with this Agreement or User's receipt or use of the Solution or Wireless Device. User, if applicable, will be responsible for, and promptly pay, any surcharges imposed by HDG including but not limited to a returned check/chargeback fee of at least \$35.00 per occurrence. HDG reserves the right, at its sole discretion, to charge (I) a reconnection fee to any User wishing to continue using the Solution after any

form of suspension, (II) an early termination fee to any User wishing to terminate use prior to the completion of any term commitment which the User has not paid for in advance, or (III) an excessive usage fee to any User whose use of the Solution exceeds the plans allowance of consumable services (as defined and stated by the plan's details or disclaimers). For the avoidance of doubt, HDG will notify any User with excessive usage, prior to imposing an excessive usage fee, for the purpose of aiding the User in developing a strategy to modify their use of the Solution, or offering a reasonable alternative subscription plan to accommodate their level of use.

- 6.4. **Refunds.** User acknowledges and agrees that the issuance of any refund shall be determined by HDG, at its sole discretion, and that HDG may reasonably deny the issuance of any refund. User understands that no refund will be issued for (I) Wireless Devices, (II) activation fees, (III) partial month's subscription plan fees, (IV) late payment fees, or (V) taxes or surcharges or other fees imposed in accordance with this Agreement, unless otherwise agreed upon and provided in writing by HDG. In the event that any User having purchased an annual subscription plan wishes to terminate use prior to the completion of the plan's term, HDG may issue a prorated refund as follows: the amount of the refund issued will be no more than the amount equal to the per month portion of the annual subscription fee (which is determined by dividing the amount paid for the annual plan by 12) multiplied by the number of full months remaining in the plan's term (which is determined by counting the full months remaining starting 30 days after proper termination notice has been received and the expiration date of the subscription plan). User understands that any refund issued will be done so in the form of a paper check sent by standard mail.

7. TERM AND TERMINATION

- 7.1. **Term.** This Agreement commences on the Effective Date and the initial term will be indicated by the subscription chosen and purchased by the User. Unless terminated in accordance with its terms, this Agreement will automatically renew for successive like terms.
- 7.2. **Termination.** Either Party may terminate this Agreement by written notice to the other Party at least thirty (30) days prior to the expiration of the applicable term. For the avoidance of doubt, any User that wishes to notify HDG of their desire to terminate this Agreement by telephone may do so; however, said User will be additionally required to either (I) send a subsequent email stating said desire to the email address provided by HDG during the telephone conversation, or (II) provide a confirmatory reply to a particular email, effectively stating User's request to terminate, sent by HDG following the telephone conversation. Furthermore, any attempt to terminate by telephone will only be accepted upon the User's completion of the aforementioned additional requirements, otherwise the attempt will be null and of no effect.
- 7.3. **Effect of Termination.** Upon any termination or expiration of this Agreement User agrees to immediately pay all balances due without limitation, and User's right to use and/or access the Solution will automatically terminate.
- 7.4. **Survival of Certain Provisions.** The provisions of Sections 3.2, 3.3, 5, 7.3, 7.4, 8, 9, and 10 shall survive the expiration or termination of this Agreement.

8. DISCLAIMERS

- 8.1. **Warranty Disclaimer.** User acknowledges that the Solution is being provided "AS IS." COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.
- 8.2. **No Warranty.** Company does not warrant that the Solution will be uninterrupted, reliable, accurate, available, error free, and free from unauthorized access. Customer acknowledges and agrees that it should not rely on the Solution for any reason. Use of the Solution, including use of any analysis or information provided in connection thereto, by User or any third party shall be at User's sole risk and

liability.

- 8.3. **Third Party Providers.** User acknowledges that certain services related to the Solution are provided or dependent upon by third party providers (e.g. cellular operators). The Company is not responsible for any act or omission or the availability or quality of any products or services provided by such third parties. Coverage of cellular networks is limited, and performance may be impacted by various factors. POOR CELLULAR COVERAGE, OTHER NETWORK PROBLEMS, OR LIMITED OR NO GPS RECEPTION MAY RESULT IN AN INABILITY TO USE THE SOLUTION.
- 8.4. **Compliance.** User agrees that the Solution will not be used for any illegal activity. Additionally, User understands that there may be local laws governing User's use of the Solution, and that User is solely responsible for complying with all state, federal, and local laws, rules, ordinances, mandates, procedures, or the like that may be imposed upon User by any and all federal, state, municipal, or any other authority having jurisdiction regarding the installation, maintenance, use, and/or dispatching mandates imposed by the aforementioned.

9. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 9.1. **Limitation of Liability.** IN NO EVENT WILL HDG BE LIABLE TO USER OR TO ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE INSTALLATION OR USE OF OR INABILITY TO USE THE SOLUTION OR FOR ANY ERROR OR DEFECT IN THE SOLUTION, INCLUDING WITHOUT LIMITATION INCORRECT DETERMINATION OF LOCATION AND DELAYED AND/OR UNTRANSMITTED DATA, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT HDG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- 9.2. **Limitation of Remedy.** HDG'S TOTAL AGGREGATE LIABILITY TO USER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ONE HUNDRED FIFTY UNITED STATES DOLLARS (\$150.00) REGARDLESS OF HOW MUCH USER HAS PAID TO HDG ACCORDING TO THIS AGREEMENT, OR WHAT LEGAL THEORY MAY BE USED TO DETERMINE HDG'S LIABILITY. FURTHERMORE, ANY CLAIM OF LIABILITY BY USER AGAINST HDG IS LIMITED TO ONE OCCURANCE AND UPON RECEIPT OF THE ABOVE STATED COMPENSATION, USER WAIVES ALL RIGHT TO FURTHER CLAIMS OF LIABILITY AGAINST HDG.
- 9.3. **Indemnification.** IN THE EVENT ANY LAWSUIT OR OTHER CLAIM IS FILED BY ANY OTHER PARTY AGAINST HDG OR ITS AGENTS, EMPLOYEES, AFFILIATES OR RELATED COMPANIES ARISING OUT OF THE SOLUTION, THE USER AGREES TO BE SOLELY RESPONSIBLE FOR, AND TO INDEMNIFY AND HOLD HDG COMPLETELY HARMLESS FROM, SUCH LAWSUIT OR OTHER CLAIM INCLUDING PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEYS' FEES. THESE OBLIGATIONS WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. THESE OBLIGATIONS WILL APPLY EVEN IF SUCH LAWSUIT OR OTHER CLAIM ARISES OUT OF THE COMPANY'S NEGLIGENCE, FAILURE TO PERFORM DUTIES UNDER THIS AGREEMENT, STRICT LIABILITY, FAILURE TO COMPLY WITH ANY APPLICABLE LAW, OR OTHER FAULT.

10. GENERAL

- 10.1. **Notices.** Any notice, report, or statement required to be given or made hereunder shall be considered properly given if sent by email, or registered or certified mail, return receipt requested, postage-paid to the respective address of each Party as either of the Parties shall have last furnished in writing to the other.
- 10.2. **Modification and Amendments.** HDG may modify this Agreement at any time by posting a revised

version on its website or by otherwise notifying the User in accordance with the notice requirements set forth in this Agreement. The modified terms will become effective upon posting, or if HDG notifies the User by email, as stated in the email message. By continuing to use the Solution after the effective date of any modifications to this Agreement, User agrees to be bound by the modified terms. It is the User's responsibility to check the referenced website regularly for modifications to this Agreement.

- 10.3. **No Liability for Certain Delays or Failures of Performance.** HDG and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including Acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms, floods, or other elements of nature, blockages, embargoes, riots, cyber-attacks (including without limitation distributed denial of service attacks, malware, ransomware, and any other cyber events), acts or orders of government, acts of terrorism, or war.
- 10.4. **Assignment.** User may not assign this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of HDG. Any attempted assignment without such consent will be null and of no effect.
- 10.5. **Governing Law: Venue.** The laws of the State of Illinois govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Kane County, Illinois, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relations to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (I) any claims or actions brought being exclusively heard by a judge, additionally waiving any rights to a trial by jury, (II) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Kane County, Illinois; and (III) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
- 10.6. **Recovery of Litigation Costs.** In the event that any legal action or other proceeding is brought for the enforcement of or in connection with this Agreement, the unsuccessful Party shall pay to the successful Party reasonable attorney's fees and any other relevant cost incurred as a result of said action or proceeding (in addition to any other relief to which the successful Party may be entitled).
- 10.7. **Non-Waiver.** No delay or failure of HDG in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights, express or implied, hereunder.
- 10.8. **Severability.** Each clause of this Agreement and each part of each clause must be read as a separate and severable provision. If any provision is found to be void and unenforceable, that provision may be severed, and the remainder of this Agreement must be interpreted as if the severed provision had never existed.
- 10.9. **Entire Agreement.** This Agreement and any exhibits, attachments, or other documents related thereto constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous agreements whether written or oral.