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Last Updated: June 30, 2023

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        7.3   Exclusions. The limitations on liability in Sections 7.1 and 7.2 above shall apply to the maximum extent permitted by law, but Scuba does not limit its liability caused by its own gross negligence, fraud, or willful misconduct.

        7.4   Basis of the Bargain. The limitations on damages set forth above are fundamental elements of the basis of the bargain between Licensee and Scuba.

8.   **TERM AND TERMINATION**

        8.1   Term. This Agreement will become effective upon your Acceptance and remain in full force and effect through the end of your License Term, unless earlier terminated in accordance with below.

8.2   **Suspension and Termination.** Scuba may suspend or terminate Licensee's license provided herein or terminate this Agreement at any time for any reason without liability at Scuba's sole discretion, including for any use of the Software or Services in violation of this Agreement or Scuba discontinues its Software offering. Licensee may terminate this Agreement at any time by uninstalling and deleting the Software from its Platform and ceasing use.

8.3   **Survival.** Even after this Agreement is terminated, this Section 8.3 and the following sections will remain in effect: 3.3 (Monitoring and Enforcement), 4 (Intellectual Property Rights), 5 (Warranty Disclaimer), 6 (Indemnification), 7 (Limitation of Liability), 9 (Dispute Resolution), 10 (General).

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9.1   **Negotiation or Mediation.** Parties shall first attempt to resolve any disputes arising out of the Software or Services or this Agreement by negotiation or mediation with a neutral third-party negotiator acceptable to both parties. Mediation expenses will be shared equally by the parties.

9.2   **Arbitration.** If parties are not able to resolve the dispute by negotiation or mediation within thirty (30) days from the date of the written notice of the dispute, the dispute shall be exclusively settled through binding and confidential arbitration. Arbitration shall be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration shall be conducted before one commercial arbitrator with substantial experience in resolving commercial contract disputes from the American Arbitration Association ("**AAA**") (adr.org) or Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") (jamsadr.com). Unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA's or JAMS's rules for commercial arbitration and, if the arbitrator deems them applicable, the procedures for consumer-related disputes. The arbitrator's award shall be final and may be enforced in any court of competent jurisdiction. Reasonable attorneys' fees and costs for arbitration shall be recoverable by the substantially prevailing party in the arbitration.

9.3   **Waiver of Jury Trial.** Except as provided for in Section 12.4: (a) you are giving up your right to go to court to assert or defend your rights, and (b) your rights will be determined by a neutral mediator or arbitrator, not a judge or jury.

9.4   **Equitable Remedies.** Either party may seek emergency equitable relief before the state or federal courts located in Delaware in order to maintain the status quo pending arbitration, and hereby agree to submit to the exclusive personal jurisdiction of the courts located within Delaware for such purpose.

9.5   **Governing Law and Jurisdiction.** These Terms and any dispute or claim arising out of or in connection with their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the state of Delaware, except that the arbitration provision shall be governed by the Federal Arbitration Act.

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**10.6	Entire Agreement.** This Agreement, including any additional terms and policies which have been included herein by reference, constitute the entire agreement between the parties regarding the use of the Software and Services.

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**10.8	Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

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**10.10	Assignment.** This Agreement, and Licensee's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred without Scuba's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Scuba may freely assign this Agreement. The terms and conditions set forth in this Agreement shall be binding upon assignees.

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Attn: Legal Department
Scuba Analytics, Inc.
800 W. El Camino Real, Ste 180
Mountain View, CA 94040

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