

## MASTER PURCHASE AGREEMENT

**IMPORTANT! THIS MASTER PURCHASE AGREEMENT (“AGREEMENT”) IS BY AND BETWEEN MONARC, INC. (“MONARC”) AND YOU AS PURCHASER (“PURCHASER” OR “YOU”) IN CONNECTION WITH THE PURCHASE OF THE ROBOTIC QUARTERBACK MACHINE CONTEMPLATED UNDER THE APPLICABLE ORDER FORM (THE “ORDER”) TO WHICH THIS AGREEMENT IS INCORPORATED BY REFERENCE. BY EXECUTING THE ORDER, CLICKING “I AGREE”, ACCEPTING ANY SEEKER SYSTEM, OR OTHERWISE SIGNIFYING YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT (A) YOU ARE AUTHORIZED TO ENTER THIS AGREEMENT FOR AND ON BEHALF OF PURCHASER, AND ARE DOING SO, (B) YOU AND PURCHASER CAN LEGALLY ENTER INTO THIS AGREEMENT AND (C) YOU HAVE READ AND UNDERSTAND AND AGREE THAT YOU AND PURCHASER SHALL BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL MODIFICATIONS AND ADDITIONS PROVIDED FOR. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, MONARC WILL NOT SELL ANY SEEKER SYSTEM.**

### RECITALS

Monarc is the owner of, or controls, a robotic quarterback machine (comprised of hardware and software) for smart football training, as more particularly described on the Order (the “**Seeker System**”).

Purchaser wishes to purchase the Seeker System(s) as identified from time to time on the applicable Order and Monarc has agreed to sell such Seeker System(s) to Purchaser on the terms and conditions set forth in the applicable Order and this Agreement.

**NOW THEREFORE**, in consideration of the promises and mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the terms and conditions set forth herein.

### 1. PURCHASE OF SEEKER SYSTEM.

(a) Monarc hereby sells to Purchaser and Purchaser hereby purchases from Monarc all rights, title and interest in the Seeker Systems requested by Purchaser and delivered by Monarc on the terms set forth in this Agreement and the applicable Order.

(b) Purchaser will, prior to the date of delivery of each Seeker System to Purchaser, execute the applicable Order covering such Seeker System. The Order shall set forth the specific purchase terms for each such Seeker System (the “**Individual System Purchase**”) which will include, among other things, the purchase price, the deposit and any other payments due with respect to each such Seeker System.

(c) The Seeker System will generate various data and information in connection with its operation including (i) motor positioning and speed history (the “**Positioning Data**”), (ii) location data derived from cellular and Wi-Fi connectivity (the “**GPS Data**”), (iii) sensor data relating to Pulse Tracking System Tags and Anchors (the “**Sensor Data**”) and (iv) usage data from user interaction with the Seeker

System user interface (the “**Usage Data**”). Monarc shall own the Positioning Data, GPS Data, Sensor Data and Usage Data and any other data generated by the Seeker System (collectively, the “**Monarc Data**”) and may use the Monarc Data without restriction.

## **2. PURCHASE PRICE AND OTHER CHARGES; ANNUAL SUBSCRIPTION FEES.**

(a) The purchase price for the Seeker Systems (the “**Purchase Price**”), the deposit and the other payments in connection with the purchase of the Seeker Systems (together with the Purchase Price, collectively, the “**System Payments**”) are set forth in the applicable Order. Purchaser shall pay Monarc the Purchase Price and other System Payments in accordance with the applicable Order and this Agreement.

(b) The Purchase Price includes the fees for (a) the License and (b) the Support Services for the Initial Term.

(c) If Purchaser elects to purchase an Annual Subscription as contemplated under Section 5(c), then the fees for any such Annual Subscription shall be Monarc’s then current annual subscription fees (the “**Subscription Fees**”), less any discounts as set forth in the applicable order. Purchaser shall pay Monarc the Subscription Fees in accordance with the applicable Order and this Agreement.

## **3. USE OF SEEKER SYSTEM.**

Purchaser shall:

(i) not use or permit the use of any Seeker System in violation of any Federal, state or local laws, statutes, rules, regulations or ordinances, or contrary to the provisions of the insurance policy coverage;

(ii) upon Monarc’s request, provide to Monarc information regarding the use and operations of the Seeker Systems;

(iii) manage and monitor the Seeker Systems at all times while the Seeker Systems are being operated;

(iv) not, and shall not attempt to, modify or access the hardware, the software or the safety features of the Seeker System for any reason, including for repair or maintenance, without the prior written consent of Monarc; and

(v) not try to fix a Seeker System if it becomes unresponsive, or otherwise does not seem to be safe in any way. Purchaser should shut the Seeker System down immediately and shall promptly notify Monarc.

## **4. LICENSE.**

(a) Subject to the terms of this Agreement, Monarc grants to Purchaser a limited, non-exclusive, irrevocable (except for breach), non-transferable and royalty-free license to use the software that is a part of the Seeker System (as modified from time to time, the “**System Software**”) solely as part of the

Seeker System (the “**License**”). Purchaser shall have no right to use the System Software as stand-alone software or in connection with any other system or hardware. Monarc and its third-party licensors reserve all other rights and licenses in and to the System Software not expressly granted to Purchaser under this License.

(b) The System Software, documentation and the associated copyrights and other intellectual property rights are protected by law and international treaties. This License confers no ownership rights to Purchaser and is not a sale of any rights in the System Software or the media on which the System Software may be recorded or printed. Purchaser does not acquire any rights, express or implied, in the System Software, other than those rights specified in this License. Monarc or its third-party licensors shall own and retain ownership of all right, title, and interest in and to (i) the System Software and any copies, modifications, enhancements, and derivative works thereof; (ii) any ideas, suggestions, or feedback relating to the System Software and/or the Monarc Data (“**Feedback**”); and (iii) all intellectual property rights (including any patents, copyrights and trademarks) embodied within the foregoing subparagraphs (i) and (ii). Purchaser hereby irrevocably assigns and agrees to assign all of its right, title, and interest in and to any Feedback to Monarc.

(c) Restrictions. Purchaser shall not:

- copy, modify, adapt, translate create derivative works or improvements or merge copies of the System Software or the documents except as specifically provided in this License
- translate, reverse engineer, de-compile or disassemble the System Software, except to the extent that applicable law explicitly prohibits this contractual restriction
- defeat, circumvent or disable any copy protection mechanism or mechanism in the System Software used to limit license duration or access to non-licensed functionality or capacity
- install, use, access, display and run the System Software except in the manner in which it has been licensed as indicated herein and in the applicable purchase order, quote or the license file for such System Software, including but not limited to any restrictions on number of protected applications, number or type of licensed devices, number of authorized copies or instances, number of users, bandwidth, non-production use, database or location restrictions
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the System Software to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service
- delete or in any manner alter the copyright, trademark, and other proprietary rights notices of Monarc and/or its third-party licensors appearing on any System Software or any other Monarc software or products
- access or use the System Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property rights or other rights of any third party, or that violates any applicable law

## 5. EXPENSES; MAINTENANCE; SUPPORT SERVICES; BUY-BACK AND IMPROVEMENTS.

(a) Purchaser shall be solely responsible for all costs and expenses incurred in connection with the use and operation of the Seeker Systems, including sales or use taxes (if any), and all other taxes as may be imposed by law from time to time arising from Purchaser's use and operation of the Seeker Systems. Purchaser shall reimburse and hold Monarc harmless for any and all amounts Monarc may pay in satisfaction, release or discharge of such costs and expenses.

(b) Unless otherwise directed by Monarc, Monarc shall be responsible for maintaining the Seeker Systems in good condition, repair, maintenance and running order. Support shall be provided via email at [support@monarcsport.com](mailto:support@monarcsport.com) between the hours of 9:00 am and 5:00 pm CST Monday to Friday, excluding all state and Federal and other company holidays.

(c) Monarc shall also provide all of the support services included on Exhibit A (as modified from time to time, the **"Support Services"**) during the Initial Term. After the Initial Term, the only Support Services that Customer will continue to receive are (i) Bug Fixes and (ii) Phone Guidance. If Customer wishes to continue to receive all of the Support Services after the Initial Term, however, then Customer shall have the option to purchase an annual subscription (the **"Annual Subscription"**) that can only be exercised by sending written notice to Monarc during the thirty (30) day period after the Initial Term ends (the **"Exercise Period"**). The Annual Subscription shall automatically renew unless either Party elects not to renew by sending written notice at least sixty (60) days prior to the end of the then current Annual Subscription or this Agreement is terminated earlier for cause pursuant to Section 6 (each a **"Renewal Subscription"** together with initial Annual Subscription, the **"Subscription Term"**). If Purchaser does exercise its right to purchase an Annual Subscription during the Exercise Period, then Purchaser shall have no right to later purchase an Annual Subscription for that Seeker System.

(d) Customer may also request that Monarc buy-back the Seeker System during the Exercise Period. The decision whether or not to buy-back a Seeker System shall be at Monarc's discretion. Even if Monarc decides to buy-back a Seeker System, the buy-back price (the **"Buyback Price"**) will vary depending on the condition of the applicable Seeker System. Monarc will provide the Buy-back Price promptly upon request.

If Monarc buys-back a Seeker System, Customer may elect to continue using the Seeker System by purchasing a subscription at the then current subscription price (but without an activation charge). If Customer decides not to purchase a subscription upon the buy-back, Customer at its risk and expense shall promptly return each applicable Seeker System to Monarc at such place and by such reasonable means as may be designated by Monarc, in the same repair, condition and working order as at the date of delivery of the applicable Seeker System, reasonable wear and tear resulting from proper use excepted. If any Seeker System is not returned in the required condition, Customer shall pay Monarc, at Monarc's option, the estimated cost to restore such Seeker System to such condition, or the actual cost of restoration, if the Seeker Systems is restored. If for any reason Customer fails to return any Seeker System to Monarc as and when required in accordance with this Section 5(d), (i) Monarc, or any of its employees, agents, contractors, subcontractors or consultants, shall have the right to enter upon any premises where the Seeker System may be located and to remove and repossess such Seeker System and (ii) Customer shall pay Monarc additional

rent for such Seeker System at the then applicable pro-rated daily rent until such Seeker System is actually returned to Monarc.

If Customer decides not to purchase a subscription upon the buy-back, and later decides to purchase a new subscription, then Customer will be required to pay the then current activation fee in addition to the yearly subscription fee.

(e) Unless otherwise approved by Monarc in writing, Purchaser shall not make any alterations, additions or improvements to any Seeker System or replace any parts during the Term.

## **6. INSPECTION OF SEEKER SYSTEM.**

During the Term, Monarc, any of its employees, agents, contractors, subcontractors or consultants and any of their respective successors or assigns shall have the right (i) to inspect any Seeker System at any reasonable time(s) during the Term upon no less than five (5) days' prior written notice and (ii) to enter into or upon any building or place where any Seeker System is located to perform any such inspection.

## **7. TERM AND TERMINATION.**

(a) This Agreement shall become effective on the date of the initial Order and shall continue for two (2) years after the delivery of the Seeker System, unless terminated earlier for cause pursuant to this Section 7 (the “**Initial Term**”). After the Initial Term, this Agreement shall automatically terminate if Purchaser does not purchase an Annual Subscription or Monarc buys-back all of Customer's Seeker Systems, in accordance with Section 5(d). If Purchaser purchases an Annual Subscription, then this Agreement shall continue until the termination or expiration of the Subscription Term (together with the Initial Term, (the “**Term**”).

(b) This Agreement, all Licenses and any Subscription Term may be terminated for cause upon the occurrence of any of the following:

(i) by a party, effective on written notice to the other party, if such other party breaches a payment obligation under this Agreement and such breach remains uncured ten (10) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(ii) by a party, effective on written notice to the other party, if such other party breaches any non-payment obligation or term under this Agreement and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) by Monarc, effective on written notice to Purchaser, if Monarc believes in good faith that (A) that Purchaser is intentionally operating a Seeker System unsafely or (B) the Seeker Systems cannot be operated safely and cannot be repaired to address such safety issues.

(iv) by a party, effective immediately, if the other party: (A) is dissolved or liquidated or takes any corporate action for such purpose; (B) becomes insolvent or is generally unable to pay its debts as they become due; (C) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (D) makes or seeks to make a general assignment for the benefit of its creditors; or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

(c) In addition to those Sections of this Agreement which by their nature are intended to survive any expiration or termination of this Agreement, Sections 4(a)(except for breach by Purchaser), 4(b), 4(c), 7(c), 8, 9, 10(b), 12, 14, 16 and 17 shall specifically survive any expiration or termination of this Agreement.

## **8. INDEMNIFICATION.**

(a) Monarc shall hold harmless, defend and indemnify Purchaser and its affiliates and their respective officers, directors, employees and agents from and against any and all claims, demands, lawsuits, losses, damages, injuries (including personal injury, sickness, death or property damage), expenses (including attorney fees), and other liabilities of any kind or nature, whether sounding in contract, tort, strict liability or otherwise, brought by or resulting from claims by third parties which are based upon or arising out of any actual or alleged (i) gross negligence or intentional misconduct of, or nonperformance or breach of this Agreement by, Monarc or its employees, agents, contractors, subcontractors or consultants, or (ii) violation of any applicable law by Monarc or its employees, agents, contractors, subcontractors or consultants.

(b) Purchaser shall hold harmless, defend and indemnify Monarc and its affiliates and their respective officers, directors, employees and agents from and against any and all claims, demands, lawsuits, losses, damages, injuries (including personal injury, sickness, death or property damage), expenses (including attorney fees), and other liabilities of any kind or nature, whether sounding in contract, tort, strict liability or otherwise, brought by or resulting from claims by third parties which are based upon or arising out of any actual or alleged (i) gross negligence or intentional misconduct of, or nonperformance or breach of this Agreement by, Purchaser or its employees, agents, contractors, subcontractors or consultants, (ii) the use of the Seeker Systems or (iii) violation of any applicable law by Purchaser or its employees, agents, contractors, subcontractors or consultants.

## **9. LIMITATION OF WARRANTIES.**

(a) ALL SEEKER SYSTEMS, SUPPORT SERVICES, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY MONARC ARE PROVIDED "AS IS" "WITH ALL FAULTS." MONARC HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, MONARC MAKES NO WARRANTY OF ANY KIND THAT THE SEEKER SYSTEMS OR ANY OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES OR RESULTS OF

THE USE OF ANY OF THEM, WILL MEET PURCHASER'S OR ANY OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER SYSTEM, GOODS, MATERIALS OR SERVICES.

(b) None of Monarc or any of its employees, agents, contractors, subcontractors or consultants shall be liable to Purchaser for any liability, claim, loss, incidental or consequential damages caused by any Seeker System for any purpose or any defect (latent or patent) in any Seeker System or the use or maintenance of any Seeker System or any repair, servicing or adjustment of or to any Seeker System, or any delay in providing or failure to provide any Seeker System, or any interruption or loss of service or use of any Seeker System, or any loss of business.

#### **10. DELIVERY; RISK OF LOSS.**

(a) Monarc shall deliver the Seeker Systems to Customer at an address specified by Purchaser.

(b) Purchaser assumes and shall bear the entire risk of the loss of, theft of, damage to or destruction of all Seeker Systems after delivery by Monarc from any cause whatsoever ("**Casualty Occurrence**").

(c) In the event of a Casualty Occurrence to any Seeker System during the Term, Purchaser shall give Monarc notice of the Casualty Occurrence within forty-eight (48) hours of the Casualty Occurrence and return the damaged Seeker System to Monarc at Purchaser's cost. To the extent reasonably possible, Monarc will replace or repair the applicable Seeker System to good repair, condition and working order at Purchaser's cost. Notwithstanding the foregoing, if Monarc determines in its sole discretion that the Casualty Occurrence was caused by Customer's negligence or willful misconduct, then (i) Monarc shall have no obligation to replace or repair the affected Seeker System unless Customer pays for the cost of such replacement or repair. If the applicable Seeker System is determined by Monarc to be lost, stolen, destroyed or damaged beyond repair (the "**Totaled System**"), this Agreement will terminate with respect to such Totaled System unless otherwise agreed by the parties.

#### **11. INSURANCE.**

Purchaser shall purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Seeker System, to be written by an insurance company or companies satisfactory to Monarc, insuring Purchaser, Monarc and any other person or entity designated by Monarc against any damage, claim, suit, action or liability (collectively, the "**Insurance**"):

- Commercial General Liability in the amount of \$1,000,000 per occurrence Combined Single Limit for third-party bodily injury or death and third-party property damage liability, with coverage including, but not limited to, Premises and Operations, Independent Contractors, Personal Injury, Contractual Liability, and Products/Completed Operations and shall not have a deductible in excess of Ten Thousand Dollars (\$10,000.00)
- Such other Insurance as reasonably requested by Monarc

Purchaser agrees that any Insurance will by appropriate endorsement or otherwise name Monarc and any other person or entity designated by Monarc as additional insureds and loss payees, as their respective interests may appear. Further, any Insurance must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Monarc and any other person or entity designated by Monarc at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Purchaser or any other person or entity shall affect the right of Monarc or any of its employees, agents, contractors, subcontractors or consultants or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Seeker System and (iii) that the coverage is "primary coverage" for the protection of Purchaser, Monarc and their respective successors and assigns notwithstanding any other coverage carried by Purchaser, Monarc or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Monarc and any other person or entity designated by Monarc as additional insureds and loss payees shall be furnished to Monarc on or prior to the commencement of each Individual System Purchase, and annually thereafter and/or as reasonably requested by Monarc from time to time. In the event of default, Purchaser hereby appoints Monarc and any other agent of Monarc as Purchaser's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Purchaser fails to do so.

Purchaser, its employees, agents, contractors, subcontractors and consultants shall cooperate fully with Monarc, any other person or entity designated by Monarc and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Seeker System. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Seeker System, Purchaser will promptly notify Monarc of such action or claim and forward to Monarc a copy of every demand, notice, summons or other process received in connection with such claim or action.

## **12. LIMITATION OF LIABILITY.**

(a) IN NO EVENT WILL MONARC, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ORDER OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (i) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (ii) LOSS OF GOODWILL OR REPUTATION, (iii) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY SEEKER SYSTEM, OR (iv) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER MONARC OR ANY SUCH OTHER PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT WILL THE AGGREGATE LIABILITY OF MONARC, ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS



AGREEMENT, ANY ORDER OR THE USE OR OPERATIONS OF THE SEEKER SYSTEMS, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO MONARC UNDER THE APPLICABLE ORDER AND THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### **13. ASSIGNMENTS.**

(a) Monarc may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Purchaser shall, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Monarc under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Monarc under this Agreement will have all of the rights and obligations that have been assigned to it. Purchaser's rights and interest in and to the Seeker Systems are and will continue at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Monarc with or in favor of any such assignee, pledgee or transferee; provided that Purchaser shall have the right of quiet enjoyment of the Seeker Systems so long as no breach has occurred and is continuing.

(b) Purchaser may not assign, sublease, transfer or pledge this Agreement, any Seeker System, or any interest in this Agreement or in and to any Seeker System, or permit its rights under this Agreement or any Seeker System to be subject to any lien, charge or encumbrance, without the prior written consent of Monarc, which consent shall not be unreasonably withheld. Purchaser's interest in this Agreement or any Seeker System is not assignable and cannot be assigned or transferred by operation of law or otherwise. Purchaser will not transfer or relinquish possession of any Seeker System (except for the sole purpose of repair or service of such Seeker System) without the prior written consent of Monarc.

(c) Subject to the foregoing, this Agreement will be binding upon the parties and their heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of the other party and their respective successors and assigns.

### **14. GOVERNING LAW AND DISPUTES.**

This Agreement will be governed by and construed in accordance with the substantive laws of the State of Texas without regard to its conflict of law principles. Any legal suit, action or proceeding arising out of or related to this Agreement, an Order, a Seeker System, Support Services or the transactions contemplated hereby (a "**Dispute**") will be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in Travis County, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Dispute. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE. In the event that any Dispute is instituted or commenced by either party against the

other party arising out of or related to this Agreement, any Order or the use or operations of any Seeker System, the prevailing party shall be entitled to recover its actual attorneys, expert witness and accountants' fees and out-of-pocket expenses, and court costs from the non-prevailing party.

#### **15. RELATIONSHIP OF THE PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **16. CONFIDENTIALITY.**

Purchaser agrees, both during the term of this Agreement and for a period of five (5) years thereafter, to hold all information given to it by Monarc that is identified as confidential, and all information concerning the Seeker Systems and Monarc's business, including Rent Payments that are not customarily and publicly available through use the Seeker Systems and Monarc's website (collectively, the "**Confidential Information**"), in confidence, and not to make the Confidential Information available in any form to any third party or to use the Confidential Information for any purpose other than in connection with this Agreement. Purchaser agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement, including limiting disclosure to employees or other persons who have a need to know and who are subject to confidentiality agreements with terms no less restrictive than those set forth in this Section 16. This restriction on disclosure shall not apply to the extent that any Confidential Information (a) is or becomes a part of the public domain through no act or omission of Purchaser; (b) was in the Purchaser's lawful possession prior to the disclosure and had not been obtained by Purchaser from Monarc; (c) is lawfully disclosed to Purchaser by a third party without restriction on disclosure; or (d) is independently developed by Purchaser by personnel not having access to the Confidential Information.

In addition, Purchaser may disclose Confidential Information as required by law or court order; provided that (a) Purchaser provides the disclosing party with prior written notice of such obligation and the opportunity to oppose such disclosure or obtain a protective order; (b) Purchaser only discloses such Confidential Information as is required to comply with such order or law and (c) no such disclosure shall otherwise exempt such Confidential Information from being treated as confidential under this Agreement.

#### **17. MISCELLANEOUS.**

(a) Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

(b) Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership,

joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(c) Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Monarc may, without Purchaser's consent, include Purchaser's name in its lists of Monarc's current or former customers and use any testimonials or other endorsements provided by Purchaser without restriction in promotional and marketing materials.

(d) Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be provided in accordance with the Order.

(e) Entire Agreement. This Agreement together with the Orders constitute the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(f) No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(g) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(h) Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(i) Force Majeure. The obligations of a party (other than payment) will be suspended by the occurrence of any event beyond its reasonable control and not caused by its negligence, that renders its performance impossible including, acts of God, war, fire, flood, accident, strike, casualty, power failures, governmental acts, orders or restrictions or inability to obtain suitable and sufficient labor and materials. The party invoking force majeure shall (a) send written notice thereof to the other within a reasonable time after the invoking party knew or should have known that performance would be delayed or prevented due to the force majeure and (b) take reasonable steps to limit the duration and effect of any such force majeure.

(j) Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 1(c), 3, 4 or 16, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(k) Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled, in addition to any other relief that may be granted, to be awarded costs, including its reasonable attorneys' fees and other costs related to any such action, suit or proceeding, including court costs.

(l) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

## **Exhibit A**

### **Support Services**

The Support Services shall include:

- Bug Fixes
- Phone Guidance and Training Support for Machine Software Updates (collectively, “**Phone Guidance**”)
- On-site Support with a Monarc technician as deemed necessary by Monarc
- Online Issue Portal
- Seeker Diagnostics and Maintenance
- Virtual Monitoring of Devices Hardware and peripheral Damage Support
- New Hardware Updates upon Availability