

Fianu Labs, Inc.

End User License Agreement

THIS END USER LICENSE AGREEMENT (“**AGREEMENT**”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY, AND HEREINAFTER REFERRED TO AS “**LICENSEE**”) AND FIANU LABS INC., A DELAWARE CORPORATION WITH OFFICES LOCATED AT 8110 MAPLE LAWN BLVD #200, FULTON, MD 20759 (“**LICENSOR**”). THE LICENSEE AND THE LICENSOR ARE ALSO REFERRED TO INDIVIDUALLY AS A “**PARTY**” AND COLLECTIVELY AS THE “**PARTIES**”. BY EXPRESSLY ACCEPTING THIS AGREEMENT OR BY DOWNLOADING, INSTALLING, ACTIVATING AND/OR OTHERWISE USING THE SOFTWARE, LICENSEE IS AGREEING THAT LICENSEE HAS READ, AND THAT LICENSEE AGREES TO COMPLY WITH AND IS BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN LICENSEE MAY NOT DOWNLOAD, INSTALL, ACTIVATE OR OTHERWISE USE ANY OF THE SOFTWARE AND LICENSEE MUST PROMPTLY RETURN THE SOFTWARE TO LICENSOR OR ITS AUTHORIZED RESELLER, AS THE CASE MAY BE. IF LICENSEE IS ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTITY, LICENSEE ACKNOWLEDGES THAT LICENSEE HAS THE APPROPRIATE AUTHORITY TO ACCEPT THESE TERMS AND CONDITIONS ON BEHALF OF SUCH ENTITY AND TO BIND SUCH ENTITY TO THIS AGREEMENT.

1. Definitions.

- (a) “**Authorized User**” means an employee or contractor of Licensee that is not a competitor of Licensor who Licensee permits to access and use the Software and/or Documentation for internal business purposes pursuant to Licensee’s license hereunder.
- (b) “**Documentation**” means Licensor’s user manuals, handbooks, and installation guides relating to the Software that are provided by Licensor to Licensee either electronically or in hard copy form and/or that are available at <https://docs.fianu.io> or otherwise made available by Licensor.
- (c) “**Malware**” means code, files, scripts, agents and programs intended to do harm, including but not limited to, for example, viruses, worms, time bombs, and Trojan horses.
- (d) “**Ordering Document**” means the quote, ordering document, purchase order or similar written instrument between Licensee and Licensor (or Licensor’s authorized reseller) for the Software, which incorporates the term of this Agreement by reference.
- (e) “**Releases**” means, collectively, Upgrades and Updates (each as defined in Exhibit A).
- (f) “**Software**” means the product described in the applicable Ordering Document in object code format, including any Releases provided to Licensee pursuant to this Agreement.
- (g) “**Third-Party Products**” means any third-party products provided with or incorporated into the Software, including any open source software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

2. License.

- (a) License Grant. Subject to, and conditioned on Licensee’s payment of all fees for the Software and compliance with all other terms and conditions of this Agreement and the applicable Ordering Document, Licensor grants Licensee a non-exclusive, non-assignable (except in compliance with Section 13(g)), and non-transferable (except in compliance with Section 13(g)) license during the term of the applicable Ordering Document to: (i) use the Software solely for Licensee’s internal business purposes by Authorized Users; and (ii) use and make a reasonable number of copies of the Documentation solely for Licensee’s internal business purposes in connection with Licensee’s use of the Software. Access will be limited to Authorized Users, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the license fees payable hereunder.
- (b) Use Restrictions. Licensee shall not use the Software or Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Licensee shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (iv) remove any proprietary notices from the Software or the Documentation; (v) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property

right or other right of any person, or that violates any applicable law; (vi) use the Software to store or transmit Malware; (vii) use the Software in any service bureau or time-sharing arrangement; or (viii) interfere with or disrupt the integrity or performance of the Software.

- (c) Reservation of Rights. Licensors reserves all rights not expressly granted to Licensee in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Licensee or any third party any intellectual property rights or other right, title, or interest in or to the Software.
- (d) Delivery. Licensors shall deliver the Software electronically, on tangible media, or by other means, in Licensors's sole discretion, to Licensee within 2 days following the effective date of the applicable Ordering Document.
- (e) Suspension. Licensors may immediately suspend Licensee's ability to use the Software if Licensors believes there is a threat to the functionality, security, integrity or availability of the Software or any content or data in the Software.
- (f) Licensors may immediately suspend Licensee's ability to use the Software (i) if Licensee violates any provision of this Agreement, (ii) if Licensee or its Authorized Users are accessing or using the Software to commit an illegal act, or (iii) in the event of any legal, regulatory, or governmental prohibition affecting the Software or Licensee's use thereof.

3. Licensee Responsibilities.

- (a) General. Licensee is responsible and liable for all uses of the Software and Documentation resulting from access provided by Licensee or from Authorized Users' accounts, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Licensee shall take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software, and shall cause Authorized Users to comply with such provisions. Licensee shall be responsible for its Authorized Users' compliance with this Agreement and the applicable Ordering Document.
- (b) Licensee Data. Licensee shall be responsible for the accuracy, quality, integrity and legality of any Licensee or Authorized User data inputted into, or uploaded, transmitted or stored on the Software.
- (c) Third-Party Products. Licensors may distribute certain Third-Party Products with the Software. For purposes of this Agreement, such Third-Party Products are subject to their own license terms and flow through provisions. If Licensee does not agree to abide by the applicable terms for such Third-Party Product, then Licensee should not install or use such Third-Party Products. The Software may also contain certain open source software. Licensee understands and acknowledges that such open source software is not licensed to Licensee pursuant to the provisions of this Agreement and that this Agreement shall not be construed to grant any such right and/or license. Licensee shall have only such rights and/or licenses, if any, to use the open source software as set forth in the respective licenses for such open source software and Licensee shall comply with such license terms.

4. Support.

To the extent purchased by Licensee pursuant to the applicable Ordering Document, Licensors shall provide Licensee with the support services described on Exhibit A for the support term set forth in the Ordering Document.

5. Fees and Payment Terms.

- (a) Licensors will invoice and Licensee shall pay all fees reflected in the applicable Ordering Document for the use of the Software and (if applicable) for provision of the support services in accordance with the payment terms set forth in the Ordering Document. Except as otherwise explicitly provided in this Agreement, all fees and other payment obligations hereunder are non-cancellable and all amounts paid are non-refundable.
- (b) On an annual basis at the end of each Contract Year, Licensors may increase the fees for the Software and the support services for the following Contract Year upon Notice to Licensee. "**Contract Year**" means each 12-month period commencing on the execution date of the applicable Ordering Document or any anniversary of the execution date of the applicable Ordering Document during the term of the applicable Ordering Document.
- (c) All amounts payable under this Agreement and the applicable Ordering Document are exclusive of any sales, use, excise, value added, goods and services, and gross receipts taxes, and any and all similar taxes or legally imposed fees, duties or contributions based upon such amounts, except for taxes based on the net income of Licensors. All such taxes, levies, fees and withholdings and the obligation to pay such amounts to the appropriate taxing authorities in a timely manner are the sole responsibility of Licensee.

- (d) Any invoice remaining unpaid after the due date will accrue interest from the due date until the date Licensor receives such payment at a rate equal to the lesser of 1.5% or the highest rate permitted by law.
- (e) Notwithstanding any other provision of this Agreement, if Licensee fails to pay any amount when due hereunder, Licensor may suspend Licensee's ability to use the Software and its functionalities, in whole or in part, until all outstanding past due amounts are received by Licensor.

6. Auditing Rights and Required Records.

Licensee agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Licensor may, at its own expense, on reasonable prior notice, periodically inspect and audit Licensee's records, facilities and systems with respect to matters covered by this Agreement, provided that if such inspection and audit reveals non-compliance with this Agreement, Licensee agrees to remedy such non-compliance within 30 days of written notification of that non-compliance (which may include, without limitation, the payment of fees for additional licenses for the Software). Licensee shall pay for the costs of the audit if the audit determines that a deficiency of greater than five percent (5%) is found in the fees paid for the Software. Such inspection and auditing rights will extend throughout the Term of this Agreement and continue for a period of two years after the termination or expiration of this Agreement.

7. Confidential Information.

From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). The Software shall be the Confidential Information of Licensor. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall refrain from unauthorized storage, disclosure and use and will hold the Confidential Information of the disclosing Party as confidential through use of the same level of care as it employs to avoid unauthorized access, storage, disclosure, publication, dissemination or use of its own Confidential Information of like character, but in no event less than a reasonable standard of care. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, contractors, agents and other representatives who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first, to the extent legally permitted, have given written notice of such order or law to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

8. Intellectual Property Ownership; Feedback.

- (a) Licensee acknowledges that, as between Licensee and Licensor, Licensor owns all right, title, and interest, including all intellectual property rights, in and to the Software and Documentation and, with respect to Third-Party Products, the applicable third-party licensors own all right, title and interest, including all intellectual property rights, in and to the Third-Party Products.
- (b) **Feedback.** If Licensee or any of its employees or contractors sends or transmits any communications or materials to Licensor by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Licensor is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Licensee hereby assigns to Licensor on Licensee's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Licensor is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Licensor is not required to use any Feedback.

9. Limited Warranties and Warranty Disclaimer.

- (a) Licensor warrants that: (i) the Software will perform materially as described in the Documentation, accessible at <https://docs.fianu.io>, for a period of 1 year following the delivery date of the Software; and (ii) at the time of the delivery the Software does not contain any Malware that would cause the Software to become inoperable or incapable of being used in accordance with the Documentation. The foregoing warranties do not apply, and Licensor strictly disclaims all warranties, with respect to any Third-Party Products.
- (b) The warranties set forth in Section 9(a) do not apply and become null and void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, machine, or any other person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement: (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Licensor in writing; (ii) modifies or damages the Software; or (iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Licensor in writing.
- (c) If, during the period specified in Section 9(a), any Software fails to comply with the warranty in Section 9(a), and such failure is not excluded from warranty pursuant to Section 9(b), Licensor shall, subject to Licensee promptly notifying Licensor in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor reasonably requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or (ii) refund the prepaid and unused fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software. If Licensor repairs or replaces the Software, the warranty will continue to run from the initial delivery date of the Software and not from Licensee's receipt of the repair or replacement. The remedies set forth in this Section 9(c) are Licensee's sole and exclusive remedies and Licensor's sole liability under the limited warranty set forth in Section 9(a).
- (d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO (A) THE SOFTWARE OR THE DOCUMENTATION, (B) ANY THIRD PARTY PRODUCTS OR (C) ANY THIRD PARTY HOSTING ENVIRONMENT HOSTING ANY OF THE FOREGOING (COLLECTIVELY, THE "**SOFTWARE ENVIRONMENT**"). LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE ENVIRONMENT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10. Indemnification.

- (a) Licensor Indemnification.
 - (i) Licensor shall indemnify, defend, and hold harmless Licensee from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("**Losses**") incurred by Licensee resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Software or Documentation, or any use by an Authorized User of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights, provided that Licensee promptly notifies Licensor in writing of the claim, cooperates with Licensor, and allows Licensor sole authority to control the defense and settlement of such claim.
 - (ii) If such a claim is made or appears possible, Licensee agrees to permit Licensor, at Licensor's sole discretion, to (A) modify or replace the Software or Documentation, or component or part thereof, to make it non-infringing, or (B) obtain the right for Licensee to continue use. If Licensor determines that none of these alternatives is reasonably available, Licensor may terminate this Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Licensee.
 - (iii) This Section 10(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software in combination with data, software, hardware, equipment, or technology not provided by Licensor or authorized by Licensor in writing; (B) modifications to the Software not made by Licensor; or (C) use of any version other than the most current version of the Software or Documentation delivered to Licensee; or (D) Third-Party Products.

- (b) Licensee Indemnification. Licensee shall indemnify, hold harmless, and, at Licensors option, defend Licensor from and against any Losses resulting from any Third-Party Claim based on Licensee's or any Authorized User's: (i) negligence or willful misconduct; (ii) use of the Software or Documentation in a manner not authorized or contemplated by this Agreement; (iii) use of the Software in combination with data, software, hardware, equipment or technology not provided by Licensor or authorized by Licensor in writing; (iv) modifications to the Software not made by Licensor; (v) use of any version other than the most current version of the Software or Documentation delivered to Licensee, or (vi) provision of any data or information in connection with the Software or any support services, provided that Licensee may not settle any Third-Party Claim against Licensor unless such settlement completely and forever releases Licensor from all liability with respect to such Third-Party Claim and does not require Licensor to assume any obligation or relinquish any right, or unless Licensor consents to such settlement, and further provided that Licensor will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.
- (c) Sole Remedy. THIS SECTION 10 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11. Limitations of Liability

IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL FEES PAID FOR THE SOFTWARE IN THE 1 YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12. Term and Termination

- (a) Term. Unless terminated earlier pursuant to any of the Agreement's express provisions, the term of this Agreement will begin on the Effective Date and run until the later of (i) one (1) year following the Effective Date or (ii) all Ordering Documents have expired or been terminated (the "**Term**").
- (b) Termination. In addition to any other express termination right set forth in this Agreement:
 - (i) Licensor may terminate this Agreement, effective on written notice to Licensee, if Licensee: (A) fails to pay any amount when due under the Ordering Document, and such failure continues more than 15 days after Licensor's (or Licensor's authorized reseller's) delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(b) or Section 7;
 - (ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such material breach; or
 - (iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- (c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting Licensee's obligations under Section 7, Licensee shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to the Licensor that the Software and Documentation has been deleted or destroyed. No expiration or termination will

affect Licensee's obligation to pay all fees for the Software that may have become due before such expiration or termination, or entitle Licensee to any refund.

- (d) Survival. This Section 11 and Sections 1, 5, 6, 7, 8(d), 9, 10, 11, 12 and 13 will survive any termination or expiration of this Agreement.

13. Miscellaneous

- (a) Entire Agreement. This Agreement, together with any Ordering Documents and any other documents incorporated herein or therein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the foregoing and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, the applicable Ordering Document; (b) second, this Agreement, excluding its Exhibits; (b) third, the Exhibits to this Agreement; and (c) fourth, any other documents incorporated herein by reference.
- (b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing. Notices to Licensor shall be sent to Fianu Labs Inc., 8110 Maple Lawn Blvd. Suite 200, Fulton, Maryland 20759, Attention: Chief Executive Officer, and notices to Licensee shall be sent to the address(es) set forth on the applicable Ordering Document (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- (c) Force Majeure. Neither Party hereto shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of, to the extent of, and only for the duration of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, telecommunications outages, acts of God, war, terrorism, governmental action, or any other cause that is beyond the reasonable control of such Party.
- (d) 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 will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will 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.
- (f) Governing Law; Submission to Jurisdiction. This Agreement shall be governed by the laws of the State of Delaware, excluding conflict of laws provisions and excluding (i) the 1980 United Nations Convention on Contracts for the International Sale of Goods, and (ii) the Uniform Commercial Code of any state law that could apply to this Agreement. Any disputes arising out of this Agreement shall proceed in a federal or state court located in the principal place of business where the Party against whom the claim was filed resides. Each Party hereby irrevocably submits to the exclusive jurisdiction of such courts and waives, to the fullest extent permitted by applicable law, any objection to venue in such courts of any legal action or proceeding arising out of or relating to this Agreement and any claim that any such action or proceeding has been brought in an inconvenient forum.
- (g) Assignment. Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Licensor. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

- (h) Export Regulation. Licensee shall not export or permit the export of the Software or Documentation to any country in contravention of any law of the United States or any other country having jurisdiction thereover, including the Export Administration Act and regulations relating thereto.
- (i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 7 or, in the case of Licensee, Section 2(b), 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.

EXHIBIT A

SOFTWARE MAINTENANCE AND SUPPORT SERVICES DESCRIPTION

Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Agreement.

Software Maintenance and Support will be provided by Licensor during the support term in accordance with the terms of this Exhibit.

Standard Support and Maintenance, includes.

- (i) All Updates and Upgrades, as generally released by Licensor and generally made available free of charge to all licensees, at no additional cost during the period the support fees are paid in full;
- (ii) Access to Tech Support twenty-four hours a day, seven days a week on a call-back basis for assistance with Severity 1 Issues; and
- (iii) Access to Tech Support during Business Hours for basic questions about how to properly use the Software and for assistance with Severity 2 and Severity 3 Issues.

Definitions:

- (a) **"Business Day"** means Monday through Friday, excluding bank holidays generally recognized in the United States.
- (b) **"Business Hours"** means 9:00am through 5:00pm Eastern Time, Monday through Friday or as such hours may reasonably be expanded or contracted from time to time by Licensor.
- (c) **"Update"** means a minor release of the Software intended to enhance current features and fix bugs, which is typically identified by changes that are applied only to the web site code.
- (d) **"Upgrade"** means a major release of the Software intended to provide significant additional features or utility to the Software, which is typically identified as changes to any of the core systems.
- (e) **"Workaround"** means a solution to an Issue that once implemented causes the Issue to no longer meet the criteria for that "severity level" in the Severity Levels Chart below. This works as follows:
 - (i) A Workaround has been achieved for a Severity 1 Issue when a solution has been implemented that downgrades the Issue to a Severity 2 or Severity 3 Issue;
 - (ii) A Workaround has been achieved for a Severity 2 Issue when a solution has been implemented that downgrades the Issue to a Severity 3 Issue; and
 - (iii) A Workaround has been achieved for a Severity 3 Issue when a solution has been implemented that downgrades the Issue such that it no longer meets the definition of a Severity 3 issue.
- (f) **"Resolution"** means the Issue has been finally resolved.

Licensee's Responsibilities: Licensee shall:

- (i) Cooperate with Licensor in finding solutions to any issues that may arise in relation to the Licensee's use of the Software, which shall include providing reasonably detailed descriptions of issues and updates on performance of the Software and progress of any efforts Licensee has taken in addressing issues;
- (ii) Follow the procedures for issue reporting described below in "Description of Severity 1 Issue Resolution" for all Severity 1 Issues and follow the procedures for issue reporting described below in "Description of Severity 2 and Severity 3 Issue Resolution" for all other issues; and
- (iii) Permit the Licensor to view data regarding Licensee's configurations to allow Licensor to better identify and resolve issues that may arise.

Description of Tech Support: Tech Support is staffed by Licensor's Transactional Support Team and provides:

- (i) Answers to basic questions about the Software features, functions and use under normal working conditions, and
- (ii) Assistance in resolving issues where the Software does not perform in accordance with the specifications (i.e. fixing bugs).

Description of Severity 1 Issue Resolution:

For Severity 1 Issues, Licensees shall follow the procedure below:

1. Licensee will call the Fianu Support Center.
2. A Licensor representative will take the Licensee's vital information, including the company name, contact name, contact telephone number, contact email address and a description of the issue.
3. A level 2 technician will return the call within the Initial Response Period (as described in the Severity Levels Chart below) for Severity 1 Issues to gather further information from the Licensee and begin working towards a Workaround or Resolution.
4. The issue will receive constant attention from Fianu Solution Engineers until a Workaround or Resolution is achieved.

All efforts of Licensor personnel expended outside of Business Hours for any Severity 1 Issue will be purely focused on providing a Workaround to the issue. While Licensor support staff are on call at all times to respond to Severity 1 Issues, the after hours staff are not able to develop or troubleshoot custom code which may be required for a Resolution of the issue.

Description of Severity 2 and Severity 3 Issue Resolution:

- (i) The Licensee will contact the Fianu Labs Tech Support Center via email at support@fianu.io.
- (ii) The email must contain identifying Licensee information and should contain a description of the issue being encountered including Licensee's assessment of the relevant Severity Level (in accordance with the Severity Levels Chart below) and appropriate system details.
- (iii) A Transactional Support Team member (the "TSTM") will respond via email within the applicable Initial Response Period (as described in the Severity Levels Chart below) and attempt immediate Workaround or Resolution of the identified issue. If the Licensee's email requests a telephone call, the TSTM will call Licensee as requested, but Licensee (but the call may fall outside of the target initial response below).
- (iv) If the TSTM is unable to resolve the issue or provide a Workaround within the applicable Target Resolution Period (as described in the Severity Levels Chart below), the TSTM will escalate to Licensor's 2nd or 3rd Level Support on a case-by-case basis as necessary to provide a Workaround or Resolution in a manner and time as outlined in the Severity Levels Chart below.
- (v) The TSTM will have primary responsibility for contact with the Licensee and will provide updates on the Licensor's progress in addressing the issue.
- (vi) The Licensee will provide all necessary information required to address reported issues.
- (vii) The TSTM will be responsible for maintaining an updated case file for all Licensee issues.
- (viii) The Licensee and the TSTM will mutually agree that a specific case has been closed.

SEVERITY LEVELS CHART

Note: For the purpose of this Agreement, a failure attributed to one of the following shall not be considered a "Severity 1", "Severity 2" or "Severity 3" Issue and Licensor shall not be responsible or otherwise liable for it: (i) a Licensee configuration setting which was not approved in advance by Licensor; (ii) a Licensee policy setting which was not approved in advance by Licensor; (iii) a failure of a third party solution; (iv) a failure of a solution developed by Licensee; (v) a failure of any proprietary software Licensor has developed for Licensee under any professional services contract (it being understood that any support offered by Licensor with relation to such software would be governed by the contract pursuant to which such software is developed and purchased); or (vi) a failure of a Licensee internal data source such as an LDAP repository that is used to drive the Software.

Level	Issue Definition	Initial Response Period	Target Workaround or Resolution Period
Severity 1	- Due to a failure of the Software where the servers running the Software are operational and there is a critical loss of capability, which has led to a complete shutdown of the Licensee's environment - Inability of the Software to run at all - Critical failures of the Software causing the Licensee's environment to fail to perform its essential functions, occurring at least once every 2 hours	30 Minutes 24x7	Continuous effort
Severity 2	A major software bug that causes material problems, but does not cause the Licensee's monitoring environment to fail to perform its essential functions.	2 Business Hours	4 Business Days
Severity 3	- A minor software bug, causing only immaterial problems - Administrator utility errors - Upgrade issues that do not allow Licensee to enjoy new features, but do not cause material problems with previous functions	8 Business Hours	Subject to Licensor's product roadmap schedule

Email Support (all Severity Levels)	support@fianu.io
-------------------------------------	--