

# 1factory, Inc. Terms of Service

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1factory, through its Licensed Software, provides a manufacturing quality control software service (collectively, with all other services provided through the Site or Licensed Software, the "**Service**"), that, among other things, (1) enables end users to upload drawings and extract specifications, tolerances, and other criteria, to create quality control plans, (2) simplifies the collection, management, analysis, and reporting of inspection data, and (3) facilitates the exchange of manufacturing and supply chain data between entities.

"**You**" or "**Your**" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"**Users**" means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

THESE TERMS OF SERVICE ("AGREEMENT") SET FORTH THE LEGALLY BINDING TERMS FOR YOUR USE OF OUR SITE, LICENSED SOFTWARE AND SERVICE. BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, DOWNLOADING OR INSTALLING THE LICENSED SOFTWARE, OR BY ACCESSING OR USING THE SITE, LICENSED SOFTWARE OR SERVICE, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Certain features of the Service, Licensed Software or Site may be subject to additional guidelines, terms, or rules ("Additional Terms"), which will be posted on the Service, Licensed Software or Site in connection with such features. Such Additional Terms are incorporated by reference into this Agreement. In the event of any inconsistency or conflict between the Additional Terms or this Agreement, the Additional Terms will control to the extent of such inconsistency or conflict.

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## 1. Service Description.

**1.1. License Options.** The functionality and features available through the Licensed Software will depend on Your subscription (each, a “**Subscription**”), including whether You ordered a free trial (“**Free Trial**”) or have paid for access to the Services (a “**Paid Service**”), and as well as features ordered by You as set forth in an Order Form. Subscriptions may be monthly or annual, as set forth in the Order Form. “**Order Form**” means 1factory’s online form that has been accepted by 1factory, or written order form executed by both parties, evidencing the Subscription and specifying, among other things, whether the Subscription is for a Free Trial or Paid Service, the number of Users, the functionality and features ordered, the applicable fees, whether the Subscription is monthly or annual, and other charges as agreed to between the parties each form to be incorporated into and become a part of this Agreement.

**1.2 License.** Subject to the terms of this Agreement, 1factory grants You and Your Users, during the term of Your Subscription, a non-transferable, non-exclusive, license to access and use the Licensed Software to the extent and as made available on the Site, solely for Your internal business use.

**1.3 Certain Restrictions.** The rights granted to you in this Agreement are subject to the following restrictions: (a) You shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site, Licensed Software or Service; (b) You shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site, Licensed Software or Service; (c) You shall not access the Site, Licensed Software or Service in order to build a similar or competitive service; and (d) except as expressly stated herein, no part of the Site, Licensed Software or Service may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Any future release, update, or other addition to functionality of the Site, Licensed Software or Service shall be subject to the terms of this Agreement. All copyright and other proprietary notices on any Site, Licensed Software or Service content must be retained on all copies thereof. Except as provided herein, You agree not to permit any third party access to the Service, nor any materials generated by you regarding the Service (including screen shots) without 1factory’s advance written approval. You agree that the following constitute 1factory’s confidential information (i) all quantitative and qualitative information related to the methodology, operational characteristics, performance, design, algorithms, and architecture of the Licensed Software and Service; and (ii) the pricing terms of the Licensed Software and Service. You will protect such confidential information with no less than reasonable care, not disclose such confidential information to any third parties, and use such confidential information solely to the extent necessary to perform under this Agreement.

**1.4 Free Trial.** If You register on our Site for a Free Trial, we will make those Services that are part of the Free Trial available to You on a trial basis free of charge until the earlier of (a) the end of the Free Trial period for which you registered or are registering to use the applicable Service or (b) the start date of any Paid Services ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. For example, and without limitation, the Trial Service may be limited with respect to the duration, storage space, Services covered, and number of Users. Customers may upgrade from the Free Trial to Paid Service at any time, upon payment of applicable fees.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY PREFERENCES AND SETTINGS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

**1.5 Paid Services.** We shall make the Paid Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us regarding future functionality or features.

**1.6 User Subscriptions.** Unless otherwise specified in the applicable Order Form Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users set forth in the Order Form. In the event that You wish to increase the number of Users beyond the maximum number of Users for which fees have been paid, You shall be required to pay additional fees associated with the increased number of Users, prorated for the remainder of the applicable Subscription term.

**1.7 Basic Support.** You may contact 1factory’s technical support center for any for any support-related issues arising from the use of the Licensed Software via email at [support@1factory.com](mailto:support@1factory.com) or by calling +1-855-693-6836 during the hours of 8 A.M. to 5 P.M. Pacific Standard Time, Monday through Friday, excluding holidays.

**1.7. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on file storage space, limits on number of part masters, quality control plans, and inspections. Any such limitations are specified in the Order Form.

## 2. Acceptable Use Policy

**2.1. Our Responsibilities.** We shall: (i) provide our basic support for the Paid Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Paid Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which we shall give at least 8 hours notice via the Paid Services or via email, and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Paid Services only in accordance with applicable laws and government regulations.

**2.2. Our Protection and Use of Your Data.** We shall maintain commercially reasonable administrative, physical, and technical safeguards consistent with industry standards for protection of the security, confidentiality and integrity of Your Data. "**Your Data**" means all electronic data or information submitted by You to the Service. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 5.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

In the event of any known unauthorized disclosure or use of the Your Data, We will promptly notify You and cooperate with You to protect the confidentiality and ownership of Your Data.

WE USE A VARIETY OF INDUSTRY-STANDARD SECURITY TECHNOLOGIES AND PROCEDURES TO HELP PROTECT YOUR DATA FROM UNAUTHORIZED ACCESS, USE, OR DISCLOSURE. DESPITE THESE MEASURES, YOU SHOULD KNOW THAT WE CANNOT FULLY ELIMINATE SECURITY RISKS ASSOCIATED WITH YOUR DATA.

**2.3. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent, sublicense, or lease the Services, or make the Services available as a service bureau, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. "**Malicious Code**" means viruses, worms, ransom ware, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**2.4 Data Sharing.** PLEASE REVIEW YOUR ACCOUNT AND ACCOUNT SETTINGS CAREFULLY.

Our Services may enable You to share Your Data with third parties, and we will make Your Data available to those parties You designate. You are solely responsible for the persons you invite to access, view and use Your Data, and are solely responsible for ensuring that the data You share with such parties is appropriate, and has been reviewed by You prior to sharing. You acknowledge and agree that we do not require any person with whom you have shared access to Your Data via the Services to keep or hold such data in confidence, and that you are solely responsible for obtaining any assurances and entering into any confidentiality agreements regarding the treatment of Your Data by such third parties, as you may deem appropriate.

IN NO EVENT SHALL WE (AND OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY IN CONNECTION WITH ANY INFORMATION SHARED WITH THIRD PARTIES IN ACCORDANCE WITH YOUR ACCOUNT SETTINGS OR INSTRUCTIONS, OR SUCH PARTY'S USE OF YOUR INFORMATION.

Your interactions with other Users are solely between you and such User. You agree that 1factory will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any User, we are under no obligation to become involved. You hereby release and forever discharge us (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or relates directly or indirectly to, any interactions with, or act or omission of, other Users.

**2.5 User Account.** In order to access certain features of the Services you may be required to register for an account on the Site or Services (“**Account**”). In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the Services’ registration for (the “**Registration Data**”); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You are responsible for all activities that occur under Your Account. You may not share your Account or password with anyone (other than Users), and you agree to immediately notify us of any unauthorized use or your Account password or any other breach of security.

### 3. FEES AND PAYMENT TERMS

**3.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

**3.2. Auto-Renewals; Invoicing and Payment.** Paid Services commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. You may provide such notice by following the instructions in Your Account or emailing us at sales@1factory.com with the subject line “CANCEL SUBSCRIPTION”. Paid Services are paid for in advance, all payment obligations are non-cancelable and all amounts paid are nonrefundable (even if Customer cancels a Paid Services prior to expiration of the term). The per-unit pricing during any such renewal term shall be the same as that during the prior term unless we have given You notice via email of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

If You are paying via invoice per the Order Form, You will pay 1factory all amounts due (in accordance with 3.1) within thirty (30) days after the date of the invoice therefor, and 1factory will send You an invoice on the date You order a Paid Service and each month or year thereafter (depending on whether You ordered a monthly or annual Subscription), until You cancel the Subscription as described above. If You have provided us with Your credit card, You hereby authorize 1factory to bill Your credit card as described above.

**3.3. Overdue Charges.** If any charges are not received from You by the due date, then at our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) we may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 3.2 (Invoicing and Payment).

**3.4. Suspension of Service and Acceleration.** If any amount owed by You under this or any other agreement for our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized us to charge to Your credit card), we may, without limiting our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend our services to You until such amounts are paid in full. We will give You at least 7 days’ prior notice that Your account is overdue, by sending you an e-mail to the last e-mail address you provided to us, before suspending services to You.

**3.5. Payment Disputes.** We shall not exercise our rights under Section 3.3 (Overdue Charges) or 3.4 (Suspension of Service and Acceleration) for a period of at least thirty (30) days if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**3.6. Taxes.** Unless otherwise stated, our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with Your purchases hereunder. If we have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

**3.7 Currency.** All payments must be made in U.S. Dollars.

## 4. PROPRIETARY RIGHTS

**4.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, we reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**4.2. Your Data.** Subject to the limited rights granted by You hereunder, we acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

**4.3. Feedback and Suggestions.** If you provide 1factory any feedback, suggestions, bug reports, system errors, and other information or ideas regarding the Site, Licensed Software or Service ("**Feedback**"), you hereby assign to 1factory all rights in the Feedback and agree that 1factory shall have the right to use such Feedback and related information in any manner it deems appropriate. If you agree to participate in any case studies, you agree that information you provide in connection with the case study is deemed Feedback and that 1factory may use your name in connection with such Feedback.

## 5. CONFIDENTIALITY

**5.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; our Confidential Information shall include the source code, architecture and logic of the Services; and Confidential Information of each party shall include the terms and conditions of all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data and the source code, architecture and logic of the Services) shall not include any information that (i) is or becomes known to the general public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information.

**5.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose other than as is necessary to perform its obligations or exercise its rights under this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**5.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 6. WARRANTIES AND DISCLAIMERS

**6.1. Our Warranties.** We warrant that (i) we have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with the Order Form, (iii) the functionality of the Services will not be materially decreased during a subscription term, and (iv) we will use commercially reasonable means to prevent the introduction of Malicious Code in to our Services. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 9.3 (Termination for Cause) and Section 9.4 (Refund or Payment upon Termination) below.

**6.2. Your Warranties.** You represent and warrant that (i) You have validly entered into this Agreement and have the legal power to do so, (ii) Your execution of this Agreement does not violate any other agreement to which You are bound, and (iii) You have provided all notices and obtained all consents and rights necessary to grant us the rights granted by You hereunder, without the consent of any other party.

### 6.3. Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

**6.4 Special Disclaimer.** You acknowledge and agree that: (i) the Services are designed optically recognize certain plans, drawings and other specifications uploaded to the Services by You (“**Your Specs**”), (ii) the ability of the Services to accurately recognize, identify and render Your Specs is dependent upon the quality of Your Specs and that external factors, such as the quality and clarity of the image file you upload, (iii) any analyses performed, or to be performed, with regards to Your Specs is dependent upon the parameters, specifications, tolerances, allowances and other inputs provided to the Services (“**Inputs**”), and (iv) any reports, deliverables, conclusions, pass/fail decisions and other outputs provided to You via the Service (“**Outputs**”) are wholly dependent upon Your Inputs. We accordingly make no warranty, representation, endorsement or guarantee regarding, and accept no responsibility or liability for the quality, content, nature, efficacy, or reliability of any Outputs. WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATED TO OUTPUTS, INCLUDING WARRANTIES OF ACCURACY AND RELIABILITY RELATING TO ANY OUTPUTS.

## 7. INDEMNITY

**7.1 By 1factory.** 1factory will defend any suit or action (a “**Claim**”) brought against You to the extent that it arises from a third-party claim that the Licensed Software or Service, as provided by 1factory to You pursuant to this Agreement, infringes any copyright, patent, trademark, trade secret or other intellectual property right of such third party. 1factory will pay any costs, damages and reasonable attorneys’ fees attributable to such Claim, including any award in final judgment against or paid in settlement by You. You shall provide 1factory with prompt written notice of any indemnifiable Claim. 1factory shall have sole authority to defend or settle the Claim at the option of 1factory with counsel of 1factory’s choosing. If 1factory assumes control the defense of such Claim, it shall permit You to participate in the suit in an advisory capacity and You shall cooperate with 1factory and shall at all times have the right fully to participate in such defense at Your own expense. 1factory’s indemnification obligations will not apply to any Licensed Software or Service that has been (a) modified by any party other than 1factory or its agents after its delivery by 1factory; (b) combined with hardware, software, products, services, content or materials not provided by 1factory where the Claim would not have occurred absent such combination; (c) superseded by an updated version that has been made available to You (if use of that updated version would have avoided the infringement claim) or to any Licensed Software or Service that 1factory has notified You not to use. If 1factory becomes aware of a Claim alleging infringement or misappropriation, or 1factory reasonably believes such a Claim will occur, 1factory may, at its sole option: (A) obtain for You the right to continue use of the Licensed Software or Service; (B) replace or modify the Licensed Software or Service so that it is no longer infringing; or, (C) if neither (A) nor (B) is reasonably available to 1factory, terminate access to the Licensed Software or Service, in which case 1factory’s sole liability (in addition to the indemnification obligations set out in this Section) is to refund to You a prorated amount of any prepaid fees for the Licensed Software or Service applicable to the remaining period (from the date 1factory is notified of the infringement claim by You) in the then-current service term.

**7.2 By You.** You will defend any Claim brought against 1factory (or its officers, employees, or agents) to the extent that it arises from (i) Your use of the Site, Licensed Software or Services (ii) infringement by the Customer Data of any copyright, patent, trademark, trade secret or other intellectual property right of any third party or (iii) breach of this Agreement or violation of any law by You. You will pay any costs, damages and reasonable attorneys’ fees attributable to such Claim, including any award in final judgment against or paid in settlement by 1factory. 1factory shall provide You with prompt written notice of any indemnifiable Claim. You shall have sole authority to defend or settle the claim at Your option with counsel of Your choosing. If You assume control the defense of such claim, You shall permit 1factory to participate in the suit in an advisory capacity and 1factory shall cooperate with You and shall at all times have the right fully to participate in such defense at its own expense.

## 8. LIMITATION OF LIABILITY

**8.1. Limitation of Liability.** NEITHER PARTY’S LIABILITY IN THE AGGREGATE UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 3 (FEES AND PAYMENT TERMS).

**8.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 9. TERM AND TERMINATION

**9.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all Subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a Free Trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the Free Trial period.

**9.2. Term of Purchased Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless we have given You notice via email of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

**9.3. Termination for Cause.** A party may terminate this Agreement or any Order Form for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**9.4. Effects of Termination.** Upon termination of this Agreement, You will immediately cease any further use of the Services, and all rights and licenses granted by 1factory to you herein will immediately terminate. In no event shall any termination relieve You of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

**9.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Paid Services subscription, we will make available to You for download a file of Your Data in comma separated value (.csv) or Microsoft Excel (.xlsx) format along with attachments in their native format. After such 30-day period, we shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in our systems or otherwise in our possession or under our control.

**9.6. Surviving Provisions.** 2.4 (Data Sharing), Section 3 (Fees and Payment Terms), 4 (Proprietary Rights), 5 (Confidentiality), 6.3 (Disclaimer), 7 (Indemnity), 8 (Limitation of Liability), 9.4 (Refund or Payment upon Termination), 9.5 (Return of Your Data), and 10 (General Provisions) shall survive any termination or expiration of this Agreement.

## 10. GENERAL

**10.1 Changes to Terms of Service.** This Agreement is subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any) and/or by prominently posting notice of the changes on our Site. Any changes to this agreement will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new Users of our Site, Licensed Software or Service. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of our Site, Licensed Software or Service following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

**10.2 Dispute Resolution.** PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

(a) Except for either party's claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret, any and all disputes between you and 1factory arising under or related in any way to this Agreement, must be resolved through binding arbitration as described in this section. This agreement to arbitrate is intended to be interpreted broadly. It includes, but is not limited to, all claims and disputes relating to your use of any of the 1factory Site and Service.

(b) YOU AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND 1FACTORY ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AND 1FACTORY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED.

(c) Arbitration shall be initiated through JAMS, and will be governed by the rules of JAMS. The right to a hearing will be determined by the JAMS rules, and the hearing (if any) must take place in San Jose, CA. The arbitrator's ruling is binding and may be entered as a judgment in any court of competent jurisdiction. In the event this agreement to arbitrate is held unenforceable by a court, then the disputes that would otherwise have been arbitrated shall be exclusively brought in the state or federal courts located in San Francisco County, California. Claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall be exclusively brought in the state and federal courts located in San Francisco County, California.

(d) This Agreement shall be governed by and construed solely and exclusively in accordance with the laws of the State of California, USA without giving effect to any law that would result in the application of the law of another jurisdiction.

**10.3 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party.

**10.4 Entire Agreement.** This Agreement constitutes the entire agreement between you and us regarding the use of the Site, Licensed Software and Service. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. The word including means including without limitation. 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. Your relationship to 1factory is that of an independent contractor, and neither party is an agent or partner of the other. This Agreement, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without 1factory's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees.

**10.5 Copyright/Trademark Information.** Copyright © 2017, 1factory, Inc. All rights reserved. All trademarks, logos and service marks ("**Marks**") displayed on the Site are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

#### **10.6 Contact Information:**

1factory, Inc.

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