

End-User License Agreement [EULA] for Fitfactory Technology Ltd

Any use of our Subscription Software and Subscription Services is subject to the terms of this subscription end-user license agreement ("Agreement"). The Subscription Software includes all associated software components, media, printed materials, and "online" or electronic documentation. The Subscription Services includes all consulting and training services days purchased as part of a subscription package. Please read the full Agreement carefully.

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement upon sending us a purchase order, and/or downloading and/or installing and/or using the Subscription Software and/or the Subscription Services. If you do not accept these terms, do not access, download, install or use the Subscription Software or the Subscription Services.

The **Subscription Software** is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Subscription Software is licensed, not sold.

TERMS AND CONDITIONS

1. SUBSCRIPTION SOFTWARE

- 1.1. In consideration of you paying to us the Subscription Fee, we grant you a non-exclusive, non-transferable right to access or install and use copies of the Subscription Software on your computer[s], our computer[s] or a third-parties computer[s] accessed over the internet during the Subscription Period in accordance with this Agreement, and subject to any applicable Product Specific Terms.
- 1.2. The Subscription is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Subscription Software or hold this Agreement on trust for any other person.
- 1.3. Except as stated in this Agreement, you have no right to use, incorporate into other products, copy, publish, display, modify or translate the Subscription Software or any modification, adaptation or copy of the Subscription Software or any part thereof.
- 1.4. Prohibition on Reverse Engineering, Decompilation, and Disassembly. You may not reverse engineer, decompile, or disassemble the Subscription Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
- 1.5. You shall not use the Subscription Software to manufacture or distribute a product that is substantially similar to or competitive with our Subscription Software.
- 1.6.

2. SUBSCRIPTION SERVICES

- 2.1 You must use any Subscription Services days purchased within the time-limit of the Subscription Period in which they were purchased.
- 2.2 You are responsible for booking the Subscription Services days, which will be scheduled by us based on our Service Level Agreement.
- 2.3 Any Subscription Services days remaining unused at the end of the Subscription Period will expire and will no longer be available for use. No refund of the Subscription Fee will be made for these days not having been used. Subscription Services cannot be carried over to a subsequent Renewal Period.

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- 2.4 Reasonable travel and accommodation expenses will be charged to you for the delivery of Subscription Services where legitimate expenses are incurred in the delivery of those services. These expenses will be agreed with you at the time of booking the Subscription Services.

3. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 3.1 You acknowledge that
 - 3.1.1 all Intellectual Property Rights in or relating to the Subscription Software are owned by or licensed to us
 - 3.1.2 except as expressly granted under this Agreement, you have no rights in the Subscription Software, and
 - 3.1.3 we shall have the right to use your name and/or logo on customer lists on our website and in other marketing material.
- 3.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Subscription Software or which would call those rights into question.
- 3.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Subscription Software. All representations of our name or logo must remain as originally distributed.

4. PAYMENT

- 4.1 The Subscription Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and withholding tax)) shall be due and payable by you when we issue a licence key to you for the Subscription Software and Subscription Services.
- 4.2 Expenses associated with the delivery of Subscription Services shall be due and payable by you on the payment date of the invoice.
- 4.3 The Renewal Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax)) shall be due and payable by you on the payment date of the invoice.
- 4.4 You may not deduct any amounts from the Subscription Fees or the Renewal Fees, unless otherwise specified in this Agreement.
- 4.5 Where you have obtained the Subscription Software through a Reseller, the terms you have agreed with such Reseller in relation to payment and invoicing will apply instead of this clause 3.

5. CONFIDENTIALITY

- 5.1 The structure, organisation, and source code of the Subscription Software are proprietary Confidential Information of ours and our licensors. You agree not to provide or disclose any Confidential Information of ours (including relating to or derived from the Subscription Software) to any third party, including where such Confidential Information is derived under any applicable law as set out in clause 1.4.
- 5.2 Other than the disclosures referred to in our Privacy Policy, we agree not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.
- 5.3 The provisions of clauses 5.1 and 5.2 will not apply to the extent that:
 - 5.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or
 - 5.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or

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- 5.3.3 such information is required to be disclosed by law.
- 5.4 No information to which clause 4.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law)
 - 5.4.1 given the disclosing party reasonable written notice of such proposed disclosure,
 - 5.4.2 consulted with the disclosing party, and
 - 5.4.3 agreed with the disclosing party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.
- 5.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 5, the terms of the confidentiality agreement shall prevail over this clause 5.

6. WARRANTY AND SUPPORT

- 6.1 We warrant that:
 - 6.1.1 we own the Intellectual Property Rights in the Subscription Software and/or have the right to grant a licence to you;
 - 6.1.2 in creating the Subscription Software, we have not knowingly infringed the Intellectual Property Rights of third parties; and
 - 6.1.3 for a period of 30 days from the first access, installation or use of the Subscription Software the Subscription Software shall operate substantially in accordance with its description. However, you acknowledge that the Subscription Software is of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Subscription Software is free from error or defect or that operation of the Subscription Software shall be uninterrupted.
- 6.2 Other than as provided for in clause 6.1 above, we do not offer any warranty related to the Subscription Software, Subscription Services and/or the Support provided, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality. The Subscription Software has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that the Subscription Software will meet any particular user needs. You shall take full responsibility for ensuring that the Subscription Software is suitable for your intended purposes.
- 6.3 **Support.** In relation to and without prejudice to the generality of clause 6.2 above, we provide Support to users of the Subscription Software via our web site, user forums, by email and by phone. The Support is provided subject to the terms of this Agreement and our Service Level Agreement. You accept that, although we will use reasonable endeavours to solve problems identified by you, the nature of software is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to the Subscription Software, the scheduling of any new releases and the functionality those releases contain shall be under our sole control.

7. LIMITATION AND EXCLUSION OF LIABILITY

- 7.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.
- 7.2 Subject to clause 7.1, neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise). We shall not be liable to you for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, of software or data; or (c) any loss of use of hardware, software or data.

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- 7.3 Subject to clauses 7.1, 7.2 and 10.2 our aggregate liability under and in connection with this Agreement howsoever caused shall be limited in all cases to the aggregate sum of the Subscription Fees paid in the 12 months prior to the event giving rise to the liability.
- 7.4 The provisions of this clause allocate risks under this Agreement between you and us, and the Subscription Fees reflect this allocation of risks and these limitations of liability.

8. SUBSCRIPTION PERIOD, TERMINATION AND RETIRED SOFTWARE

- 8.1 The Subscription shall commence 30 days after receiving the purchase order and shall continue for the Initial Subscription Period and, thereafter, the Subscription shall be automatically renewed each month (each a “Renewal Period”), unless either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period, in which case the Subscription shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period.
- 8.2 An extended Renewal Period may be mutually agreed by the parties prior to the end of the Initial Subscription Period or any Renewal Period.
- 8.3 If we do not receive the Subscription Fee or the relevant Renewal Fee from you, we reserve the right to terminate your Subscription 30 days after the payment due date.
- 8.4 Where the Subscription is terminated in accordance with clause 8.1 or 8.3 then this Agreement shall terminate in its entirety.
- 8.5 Upon termination of this Agreement: (a) you must cease use of the Subscription Software, and uninstall, destroy or put beyond use all copies of the Subscription Software in your possession or control; and (b) the provisions of clauses 1.5, 5, 6.2, 7, 8, 10, 11.1 to 11.7 and 12 will remain in effect.
- 8.6 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.
- 8.7 **Retired Software.** We reserve the right to retire the Subscription Software (and therefore terminate the Subscription) on written notice with not less than 12 months’ notice.

9. DATA COLLECTION AND PRIVACY POLICY

- 9.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Policy, which can be viewed at www.fitfactory.com.

10. THIRD PARTY CLAIMS

- 10.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third-party claims that your use of the Subscription Software causes any such loss or damage, except in the circumstances in clause 10.2 below.
- 10.2 If any claim is brought against you alleging that your use of the Intellectual Property Rights associated with the Subscription Software in accordance with this Agreement infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimise the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against you in connection with any claim subject to a maximum of the aggregate sum of Subscription Fees paid to us by you in the 12 months prior to the claim. We shall have the right, at our sole choice, to either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing software; or (ii) use reasonable endeavours to amend the Subscription Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, we shall refund to you the Subscription Fees paid in the 12 months prior.

11. GENERAL

- 11.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 3, 5 and/or Schedule 1 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.
- 11.2 **Compliance with applicable law.** You agree that, notwithstanding clause 11.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of the Subscription Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations, including, but not limited to, International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).
- 11.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.
- 11.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 11.5 **No third-party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 11.6 **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.
- 11.7 **Revisions to terms.** For click to agree versions of the Agreement only, we reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. You have the right to terminate this agreement without penalty within 30 days of notification of revision to terms. Your continued use of the Subscription Software shall be deemed to constitute acceptance of any revised terms. Any bespoke versions of this Agreement shall continue to apply to all future access, downloads, installation or use of the Subscription Software and shall always take precedence over any click to agree versions presented at access, download, installation or use of such Subscription Software.
- 11.8 If you have any complaints about this Agreement, including complaints about the Subscription Software, please raise these with fitfactory Technology Ltd using the relevant contact details found at: <https://fitfactory.com/contact>

12. DEFINITIONS

In this Agreement, capitalised terms shall have the meanings set out below or in the relevant Schedule.

“**Agreement**” means this Subscription End-User License Agreement (EULA).

“**Confidential Information**” means any and all information that is not generally available to the public. Confidential Information also includes any information received with any understanding, express or

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implied, that it will not be disclosed. Confidential Information does not include information that enters the public domain, other than through your breach of your obligations under this agreement.

“Initial Subscription Period” means the initial Subscription period agreed between us, and as stated on the invoice starting on the Subscription Start Date;

“Intellectual Property Rights” means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;

“Privacy Policy” means the document entitled Privacy Policy on our website (<https://fitfactory.com/privacy-policy>);

“Product Specific Terms” means the terms applicable to a specific Subscription Software product as set out in Schedule 1;

“Renewal Fee” means the fee payable by you for the Subscription during the Renewal Period (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including as part of a written quotation or automatic renewal. The Renewal Fee will be collected by us monthly unless a longer Renewal Period is agreed between us;

“Renewal Period” means the monthly automatic renewal period, unless a longer Renewal Period is agreed between us;

“Reseller” means any third party authorised by us to provide Subscription Software licences;

“Retired Software” means any Subscription Software made no longer available for use.

“Service Level Agreement” means the document defining our commitment on the levels of Support and Subscription Services we will deliver to you;

“Subscription” means the right to use the Subscription Software, set out in clause 1 and/or Schedules 1 as appropriate;

“Subscription Fee” means the fee payable by you under this Agreement to us (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including through our website, or as part of a written quotation or renewal;

“Subscription Period” means the Initial Subscription Period together with any subsequent Renewal Periods;

“Subscription Services” means the Subscription Services provided by fitfactory Technology Ltd;

“Subscription Software” means the Subscription Software products provided by fitfactory Technology Ltd, licensed to you under this Agreement;

“Subscription Start Date” means 30 days from receiving the purchase order from you under this Agreement;

“Support” means the support provided to users of our Subscription Software via our web site, user forums, by email and by phone under the terms of this agreement.

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“We”, “Our”, “Us” and the non-capitalised versions mean fitfactory Technology Ltd and all subsidiary companies. fitfactory Technology Ltd is a company registered in England & Wales, Reg No: 12522322. Registered address: Valuechain Innovation Centre, SciTech Daresbury, Daresbury, Cheshire, WA4 4FS;

“You”, “Your” and the non-capitalised versions mean the organisation or individual responsible for the use of the Subscription Software and/or Subscription Services, whether the Subscription Software and/or Subscription Services is obtained directly from us or through a Reseller, and however, and wherever the Subscription Software and/or the Subscription Services are accessed and used.

SCHEDULE 1

PRODUCT SPECIFIC TERMS AND CONDITIONS

1. None Applicable