

Superstar Software Limited - Terms of Service

THESE SUPERSTAR SOFTWARE LIMITED TERMS & CONDITIONS (“Agreement” or “Terms”) GOVERN YOUR ACQUISITION AND USE OF SUPERSTAR SOFTWARE LIMITED’S SERVICES. IF YOU REGISTER FOR A FREE TRIAL FOR SUPERSTAR SOFTWARE LIMITED’S SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL. BY ACCEPTING THIS AGREEMENT, EITHER BY PROCEEDING WITH REGISTERING AN ACCOUNT FOR OUR SERVICES, OR AT THE MOMENT OF ACCESSING OUR SERVICES WHERE SUCH SERVICES DON’T REQUIRE AN ACCOUNT, YOU AGREE TO THE TERMS OF THIS AGREEMENT AND THESE TERMS WILL THEN APPLY TO YOU FROM THE TIME THAT YOU FIRST ACCESS THE SERVICES (INCLUDING WHERE YOU HAVE SUBSCRIBED VIA AN SUPERSTAR SOFTWARE LIMITED PARTNER). 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 AN ENTITY AND ITS AFFILIATES TO THESE TERMS, 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, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Superstar Software Limited reserves the right to amend these Terms at any time, effective upon the posting of such modified Terms on the Website. Superstar Software Limited will make every effort to communicate these changes to You via the System and Website. It is likely that the Terms will change over time. It is Your obligation to ensure that You have read and understood the most recent Terms available on the Website. They replace any prior agreement(s) between You and Superstar Software Limited. When we change these Terms, the “last updated” date will be updated to reflect the date of the most recent version. Your continued use of the Services after such changes have been posted as provided above constitutes Your binding acceptance of such changes. Such amended Terms will automatically be effective upon the earlier of (i) Your continued use of the Services, or (ii) 30 days from posting of such modified Terms on or through the Platform. Notwithstanding the foregoing, the resolution of any dispute that arises between You and Superstar Software Limited will be governed by the Terms in effect at the time such dispute arose.

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1. DEFINITIONS

“Seller”, “We”, “Our”, “Us”, “Company”, “Superstar Software” means Superstar Software Limited, or its entities (for example Factory Superstar), a limited company registered in Scotland, United Kingdom with registration SC749120, having its principal place of business at Unit 8 Langlands Avenue, East Kilbride, G75 0YG.

“Agreement” or “Terms” means these Superstar Software Limited Terms and Conditions and includes any notices, policies, guidelines or conditions sent to You by Superstar Software Limited or posted on the Website.

“Access Fee” means the monthly or annual fee (excluding any taxes and duties) and any applicable add-on fees or one-time-service fees payable by You in accordance with the fee schedule set out on the Website and as agreed to in Your Order Form for the Services.

“Affiliates” means any entity that directly or indirectly controls, is controlled by, or is under common control with, You (for example, one of Your subsidiaries).

“Billing Contact” means Your nominated contact entity and address for billing purposes.

“Confidential Information” means any information which the disclosing party identifies as confidential or which ought reasonably to be considered confidential because of its nature and the manner of its disclosure, including Subscriber Data and information about the disclosing party’s business plans, technical data, and the terms of Your Order but excluding information

which is, or becomes, publicly available or that is already known by, or rightfully received by, the other party other than as a result of a breach of an obligation of confidentiality.

“Your Data” means any photos, images, videos, graphics, written content, audio files, code, information or data inputted or uploaded by You (including by a User and, where You have subscribed to the Services via a Superstar Software Limited Partner, by that Superstar Software Limited Partner on Your behalf) into the System.

“Derivative Data” means any information or data generated by the System from Your Data or from Your use of or interaction with the System (for example profit margins calculated using material costs You input and time to produce a component which the System has recorded).

“Intellectual Property Right” means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“User” means a unique individual or computer terminal authorised by You to use the Services for Your benefit in accordance with this Agreement, including Your employees, representatives, contractors and agents and the employees, representatives, contractors and agents of Your Affiliates (if any), and any computer terminals which have been set up to access the System (for example via an Operator account in Factory Superstar).

“Loss” means all liabilities, expenses, losses, damages and costs (including legal costs) and expenses, however arising.

“Billing Plan” means the level and quantity of services you have agreed for Us to provide, and includes the number of Users, Operators, Sales Orders, Sales Channels, Quotes etc. that you have requested be made available.

“Order Form”

means the subscription check out page where the Superstar Software Limited Services, subscription plan, Renewal Period and other Usage Limitations and service features are selected (as subsequently varied from time to time by agreement between You and Superstar Software Limited) and by which You agree or, where You have subscribed to the Services via a Superstar Software Limited Partner, the Superstar Software Limited Partner agrees on Your behalf, to subscribe to the Services.

“Renewal Date” means the date (monthly or annual) on which Your subscription renews.

“Renewal Period” means the period for which You agree to subscribe to the Services and for which You agree to prepay the Access Fees (either monthly or annually) as specified in Your Order Form (and which may differ for each Superstar Software Limited Service).

“Services” means the entirety of the Superstar Software Limited product offering, encompassing the System, Website, customer service platforms, and any other services, components, and materials provided by Us.

“System” means the Superstar Software Limited cloud computing solutions for providing the Superstar Software Limited services, including applications, software, hardware, databases, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith.

“Subscriber”, “You” and “Your”, “Account Owner” means the person or the company or other legal entity who is identified in the Order Form as the Subscriber.

“Subscription Term” means the initial period (monthly or annual) for which you agree to subscribe to the Services and for which you agree to prepay the Access Fees as specified in Your Order Form, together with each subsequent Renewal Period (unless terminated earlier in accordance with the terms of this Agreement).

“Superstar Software Limited Partner”, “Partner” means any authorised third party channel partner through whom you obtain a subscription to the Services.

“Usage Limitations” means those limitations as specified on Your Order Form or as subsequently notified in accordance with clause 3.7, and includes any limitations that Superstar Software Limited imposes in relation to future Services, modules, or features.

“Website” means the Internet site at the domain www.factorysuperstar.com, any other sites and mobile apps operated by Superstar Software Limited.

“Your Organisations” means an organisation that You have added as a subscriber to the Services or that has been added with Your authority or as a result of Your use of the Services.

Any reference to “includes” or “including” is on a without limitation basis.

2. END USER LICENCE AGREEMENT (USE OF SOFTWARE)

2.1 Rights to access and use the Services:

Superstar Software Limited grants You the right to access and use the System (including to authorise Users to access and use the Services) in accordance with Your Billing Plan (subject to any Usage Limitations). This right is non-exclusive and limited by, and subject to, the terms of this Agreement. You acknowledge and agree that, subject to any applicable laws:

- a. the Subscriber determines who is a User and what level of access each User has to the System (up to the applicable limits imposed by your Billing Plan);

- b. the Subscriber is responsible for all Users' use of the System (whether authorised by the Subscriber or not);
- c. the Subscriber controls each User's level of access to the System at all times and can revoke or change a User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be a User or shall have that different level of access, as the case may be; and
- d. if there is any dispute between a Subscriber and a User regarding access to any System, the Subscriber shall decide what access or level of access to the relevant System that User shall have, if any.

2.2 Third Party Payment Providers:

We use third party payment providers to process payments from You for use of the System. By proceeding with payments using these providers You are agreeing to be bound by their terms of service and privacy policies which are presented at time of payment. If you do not agree with said terms or privacy policy then you must deactivate your payment account.

2.3 Our Right to Make Changes to the Services:

Superstar Software Limited may modify the Services from time to time, including by adding or deleting features and functions, as we continually improve our System and Website and the experience we offer You. However, Superstar Software Limited will not make changes to the Services that materially reduce the functionality provided to You during the prepaid period of Your subscription. However, You acknowledge that Superstar Software Limited does not control changes made by third party product providers (e.g., website hosting services) to their products and that these types of changes may impact the functionality of the Services.

2.4 Competition:

You may not, without Our prior written consent, access the Services (i) if you are a competitor of Superstar Software Limited, (ii) to monitor the availability, performance or functionality of the Services or (iii) for other benchmarking or competitive purposes.

3. YOUR OBLIGATIONS

3.1. Payment Obligations:

- a. A notification of upcoming charges for the Access Fee will be issued monthly or annually in advance (depending on Your subscription type) at the beginning of Your Subscription Term and subsequently just prior to each Renewal Date. Upon payment being made a receipt will be provided.
- b. All invoices will include the Access Fee for the corresponding period of use (including any one-time-service fees that shall be payable in lump sums). Superstar Software

Limited will continue invoicing You monthly or annually in advance (as the case may be) until this Agreement is terminated in accordance with clause 8.

c. All Superstar Software Limited invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email. You are responsible for payment of all applicable taxes and duties in addition to the Access Fees. If You are required to deduct or withhold any tax, You must pay the amount deducted or withheld as required by law and pay us an additional amount so that we receive payment in full as if there were no deduction or withholding.

d. If any invoiced amount remains unpaid after the payment due date then Superstar Software Limited may charge You late payment interest calculated at a daily rate of 5%.

e. If Superstar Software Limited has to spend money collecting overdue amounts from You then You will reimburse Superstar Software Limited for those costs.

f. As part of providing payment information, You consent for the selected method of payment, and that information provided, to be stored and used for processing future scheduled or unscheduled payments due to Superstar Software Limited under these Terms.

3.2 Variations to Access Fees:

Subject to clause 3.7, the Access Fee will remain fixed during the initial period of Your Subscription Term or the relevant Renewal Period (as applicable). Superstar Software Limited reserves the right to increase the Access Fees for the Services on 30 days' written notice to You with any such increase to then take effect on the first Renewal Date following the end date of such notice period.

3.3 Subscribers Ordering via a Superstar Software Limited Partner:

If You have subscribed to the Services via a Superstar Software Limited Partner, Your Superstar Software Limited Partner will issue the invoices for the Access Fees to You, and You must pay the invoiced amounts to the Partner in accordance with clause 3.1.

3.4. Preferential Pricing or Discounts:

You may from time to time be offered preferential pricing or discounts for the Access Fees as a result of the number of Your Organisations. Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of Access Fees in relation to all of Your Organisations. Without prejudice to any other rights that Superstar Software Limited may have under these Terms or at law, Superstar Software Limited reserves the right to render invoices for the full (non-discounted) Access Fees due or suspend or terminate Your use of the Services in respect of any or all of Your Organisations in the event that any invoices for those Access Fees are not paid in full by You to Superstar Software Limited by the due date for payment.

3.5. General Obligations:

You are solely responsible for your use of the Services and for Your Data and for ensuring at all times that Your use of the Services and Your Data is compliant with applicable laws and regulations. You must only use the Services for Your own lawful internal business purposes, in accordance with these Terms and any notices, policies, guidelines or conditions sent to You by Superstar Software Limited or posted on the Website.

3.6. Access Conditions:

a. You must ensure that all usernames and passwords (including any passwords allocated to Users) required to access the Services are kept secure and confidential. You must immediately notify Superstar Software Limited of any unauthorised use of Your passwords or any other breach of security and Superstar Software Limited will reset Your password(s) and You must take all other actions that Superstar Software Limited reasonably deems necessary to maintain or enhance the security of Superstar Software Limited's computing systems and networks (including the Website) and Your access to the Services.

b. When accessing and using the Services You must not:

- i. attempt to undermine the security or integrity of Superstar Software Limited's computing systems or networks (including the Website) or, where the Services are hosted by a third party, that third party's computing systems and networks;
- ii. use, or misuse, the Services in any way which may impair the functionality of the Services, Website or other systems used to deliver the Services or impair the ability of any other user to use the Services, including by misusing the Services in a manner that materially exceeds reasonable usage or use patterns over any month or by using the Services in a malicious, fraudulent or unlawful manner;
- iii. attempt to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the computer system on which the Services are hosted;
- iv. transmit, input or upload to the Services, any files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use); or
- v. attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the Website except as is strictly necessary to use either of them for normal operation.

3.7. Usage Limitations:

a. In addition to the restrictions imposed by your specific Billing Plan, Your use of the Services may be subject to Usage Limitations, including monthly transaction volumes, number of SKUs, number of categories or locations, and the number of calls You are permitted to make against Superstar Software Limited's application programming interface ("API"). Any Usage Limitations will remain in effect for the duration of the initial

period of Your Subscription Term or the relevant Renewal Period (as applicable). Superstar Software Limited reserves the right to vary the Usage Limitations on 30 days' written notice to You with any such variation to then take effect on the first Renewal Date following the end date of such notice period (unless Superstar Software Limited chooses to relax certain Usage Limitations, in which case such variation will take effect immediately).

b. You may not use or access the Services in a manner that exceeds these Usage Limitations. If You exceed Your Usage Limitations then then You must either disable or correct such use, or upgrade the relevant parts of your Billing Plan to the tiers which correspond with Your actual use.

c. Where Your Subscription is upgraded in accordance with clause 3.7(b), Superstar Software Limited will invoice You for the Access Fee that corresponds to Your new Subscription tier and You agree that the new Access Fee will apply from the date of such upgrade.

3.8 Usage Reviews:

You agree that Superstar Software Limited may review Your use of the Services at any time during the Subscription Term, and You will provide any reasonable assistance to verify Your compliance with this Agreement as we may request. Superstar Software Limited may suspend Your rights to access and use of the Services (including Your rights to access any of Your Data) immediately upon written notice if we determine that Your use of the Services (including any of Your Data) breaches this Agreement (without limiting any other rights or remedies Superstar Software Limited may have).

3.9. Communication Conditions:

a. As a condition of these Terms, if You use any communication tools available through the Services (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including: offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services, or material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

b. When You generate any communication on the Services, You represent that You are permitted to generate such communication. Superstar Software Limited is under no obligation to ensure that the communications on the Services are legitimate or that they are related only to the use of the Services. As with any other web-based forum, You must exercise caution when using the communication tools available on the Services. However, Superstar Software Limited does reserve the right to remove any communication at any time in its sole discretion.

4. CONFIDENTIALITY AND PRIVACY

4.1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as expressly contemplated by these Terms or, where Superstar Software Limited is the recipient, in order to provide the Services to You.
- b. Each party's obligations under this clause will survive termination of these Terms.

4.2. Privacy:

a. We take the privacy of our Clients and Users very seriously. Superstar Software Limited maintains a privacy policy that sets out what information Superstar Software Limited collects from users and why, what Superstar Software Limited does with that information, and how Superstar Software Limited handles that information. The Privacy Policy can be viewed through each Superstar Software Limited Website, and you can request a copy from Our Customer Services. In the event of any conflict between these Terms and the terms of the Superstar Software Limited Privacy Policy, the terms of our Privacy Policy will take precedence.

b. If You are subject to the territorial scope of the Regulation (EU) 2016/679 (GDPR), You agree that You are a "data controller" and that Superstar Software Limited is a "data processor" (as those terms are defined in the GDPR) and that the terms of the Data Processor Agreement form part of this Agreement.

5. INTELLECTUAL PROPERTY

5.1. General:

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of Superstar Software Limited (or its licensors).

5.2. Ownership of Data:

- a. Title to, and all Intellectual Property Rights in, the data directly provided by you remain Your property. However, Your access to Your Data is contingent on full payment of the Superstar Software Limited Access Fees when due and any re-establishment fee due and payable under clause 5.6. You grant Superstar Software Limited a licence to use,

copy, transmit, store, and back-up Your Data for the purposes of enabling You to access and use the Services and for any other purpose related to provision of Services to You. For the avoidance of doubt, this licence is without limitation to Superstar Software Limited's right to create anonymised data compilations or similar works based on Your Data and Derivative Data.

- b. For the purposes of clarification, any Derivative Data generated by the System and made available to you as a result of your use of the System (for example, calculated profit margins, statistics relating to Your Data in aggregate) remains the property of Superstar Software Limited and, while it may in the course of the provision of Our Services be made available only to You to utilise in line with the other Terms herein, it will only be available to You to retain outside the System (for example to download) at Our sole discretion.

5.3. Backup of Data:

You must maintain copies of all Your Data input or uploaded into the System. Superstar Software Limited adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of data. Superstar Software Limited expressly excludes liability for any loss of data (including data archived pursuant to clause 5.6) no matter how caused.

5.4. Third-party Apps and Your Data:

If You enable third-party apps for use in conjunction with the Services, You acknowledge that Superstar Software Limited may allow the providers of those third-party apps to access Your Data as required for the interoperation of such third-party apps with the Services. Superstar Software Limited shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers. You also acknowledge that those third party app providers are independent of Superstar Software Limited and those apps will be subject to terms and conditions and privacy notices set by their providers.

5.5. Accuracy of Data:

- a. You agree and acknowledge that You are responsible for ensuring the accuracy of data input into the System by You or by any person on Your behalf (including a Superstar Software Limited Partner). Superstar Software Limited is under no obligation to ensure that Your Data in the System is an accurate representation of Your actual business data.
- b. You agree and acknowledge that Superstar Software Limited offers no warranty or guarantee that any Derivative Data generated by the System is accurate or will meet your requirements or will be suitable for any particular purpose. Such Derivative Data is intended as a guide only and it is Your sole responsibility to determine if such data meets the needs of Your business and is suitable for the purposes you intend. Superstar Software Limited will not accept any liability whatsoever for any errors in Derivative Data or any problems or issues directly or indirectly caused by Derivative Data, for example business decisions or other actions You make based on such data.

5.6 Deletion and Recovery of Data:

a. Where:

- i. You choose to discontinue Your Services in accordance with clause 8.1;
- ii. either party terminates this Agreement in accordance with clause 8.3;
- iii. Superstar Software Limited suspends or terminates this Agreement in accordance with clause 8.5; or
- iv. Superstar Software Limited otherwise suspends and/or terminates Your right to access to the Services in accordance with this Agreement, it is Your responsibility to extract Your Data from the System prior to the effective date of such suspension or termination. Following the effective date of suspension or termination, Superstar Software Limited reserves the right, in Superstar Software Limited's sole discretion, to either (i) delete Your Data or (ii) archive Your Data for a period of time of up to six months (upon the expiry of which time Superstar Software Limited may delete Your Data).

b. If Superstar Software Limited has chosen to archive Your Data and if Your Services are subsequently re-established within the archive period then Superstar Software Limited will restore Your access to the archived data provided that You pay Superstar Software Limited in advance:

- i. all arrears of Your unpaid Access Fee over the period that the data was archived; and
- ii. a re-establishment fee as is determined by Superstar Software Limited in Superstar Software Limited's sole discretion and notified to You.

c. Where your right to access and use the Services has been terminated and Superstar Software Limited has chosen to archive Your Data, if You omitted to extract Your Data prior to the effective date of such termination and You subsequently notify us that You require access to Your Data then Superstar Software Limited will temporarily restore Your access to the archived data provided that You re-subscribe to the Services for a month and that You pay Superstar Software Limited the associated Access Fee together with a one-off fee of such amount as is determined by Superstar Software Limited in Superstar Software Limited's sole discretion and notified to You.

d. You acknowledge that any data that may be archived and restored under this clause will include Your Data but may exclude integration and other Superstar Software Limited Services data including Derivative Data.

5.7 Feedback

If You provide Us with any comments, bug reports, feedback, reviews, or modifications for the Services ("Feedback"), We shall have the right to use such Feedback at our discretion, including, but not limited to the incorporation of such suggested changes into the Services. You hereby grant Us a perpetual, irrevocable, nonexclusive, royalty free licence under all rights necessary to incorporate, publish, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, exploit and use Your Feedback for any purpose.

6. WARRANTIES AND ACKNOWLEDGEMENTS

6.1. Data:

- a. You represent and warrant that:
 - i. You have obtained all necessary consents and are otherwise authorised to input or upload the data that You input or upload to the System, including any data inputted or uploaded to the System by any User or by a Superstar Software Limited Partner on Your behalf; and
 - ii. You are similarly authorised to access the processed data that is made available to You through Your use of the Services, in each case, whether the inputted or uploaded data is Your own or that of anyone else.

6.2 Rights of Third parties / Access to Data:

- a. You acknowledge and agree that Superstar Software Limited has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person that is enforceable against us by any person (including Your Affiliates) other than You.
- b. If You use the Services on behalf of or for the benefit of anyone other than Yourself (whether a body corporate or otherwise) You agree that:
 - i. You are responsible for ensuring that You have the right to do so;
 - ii. In the case of a third person requiring access to Your Data (i.e., other than a User), You are responsible for authorising any such person to access Your Data, and You agree that Superstar Software Limited has no obligation to provide any such person with access to Your Data without Your prior written authorisation (and may refer any third party access requests for information to You to address); and
 - iii. You will indemnify Superstar Software Limited against any Loss arising out of or in connection with Superstar Software Limited's refusal to provide such third persons with access to Your Data and/or Superstar Software Limited enabling access by such third persons to Your Data where this has been done with Your written authorisation.

6.3 Acknowledgements and Disclaimers:

You acknowledge and agree that Superstar Software Limited gives no warranty about the Services and, without limiting the foregoing:

- a. The provision of, access to, and use of, the Services is on an "as is" basis and at Your own risk.
- b. While Superstar Software Limited will use commercially reasonable efforts to make the Services available at all times, it does not warrant that the use of the Services will be uninterrupted or error free. Planned downtime, and any unavailability caused by circumstances beyond our reasonable control including, for example, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack may from time to time interfere with or prevent access

to the Services. Superstar Software Limited is not in any way responsible for any such interference or prevention of Your access or use of the Services.

c. Superstar Software Limited does not warrant that the Services will meet Your requirements or that the Services will be suitable for any particular purpose. It is Your sole responsibility to determine that the Services meet the needs of Your business and are suitable for the purposes for which they are used.

d. You remain solely responsible for complying with all applicable accounting, tax and other laws. It is Your responsibility to check that storage of and access to Your Data via the Services will comply with laws applicable to You (including any laws requiring You to retain records).

e. You are solely responsible for assessing the correct taxes you should charge Your customers.

6.4. No Implied Warranties:

To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including warranties of merchantability and fitness for purpose, title and non-infringement.

6.5. Consumer Protection Laws:

You warrant and represent that You are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services or these Terms.

7. INDEMNITY AND LIMITATION OF LIABILITY

7.1. Indemnity:

You agree to defend, indemnify and hold harmless Superstar Software Limited and its affiliates, and their respective directors, officers, employees and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of your use or misuse of the Superstar Software Limited Services, Superstar Software Limited Materials, representations made to Us, our affiliates and/or third parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants. We reserve the right, at its own expense, to assume the exclusive defence and control of any matter for which you are required to indemnify Supplier, and you agree to cooperate with such defence of these claims.

7.2. Superstar Software Limited is Not Responsible:

To the maximum extent permitted by law, Superstar Software Limited will not be liable to You (or any other person) in contract, tort (including negligence), or otherwise, for any Losses (whether direct or indirect) arising out of, or in connection with, Your use of, or reliance on, the Services or otherwise arising out of or in connection with these Terms.

7.3. Limitation of Liability

If, notwithstanding clause 7.2, Superstar Software Limited is determined to have any liability to You (or any third party) arising out of or in connection with these Terms, Superstar Software Limited's liability in respect of any one incident, or series of connected incidents, will be limited to an amount equal to the Access Fees paid by You in the three months preceding the first such incident.

8. TERMINATION AND SUSPENSION

8.1. Trial Policy:

When You first sign up for access to the Services You can evaluate the Services for a period of 14 days, with no obligation to continue to use the Services. If You do elect to continue using the Services within this 14 day timeframe, You will be billed from the day You first added Your billing details into Your Order Form. If You choose to discontinue using the Services, You can do so at any time by clicking the 'cancel subscription' button in your billing page in the System.

8.2. Modifications by You to Your subscription:

You may only reduce Your Billing Plan to a lesser Service, or reduce your subscription tiers when you are not using the System features that are not available in the lower level subscription. Changes to your subscription can be made through the System at any time. If your amended fee is less than your original fee you will be provided credit for the following billing period prorated to discount use up to the time your Billing Plan was amended. If your amended fee is greater than your original fee you will be billed for the increase at the start of the following billing Period. Changing to a lower level plan may cause the loss of features or data.

8.3. No-fault Termination:

The Subscription Term will renew automatically at the end of the initial period of Your Subscription Term and then subsequently at the end of each Renewal Period and the Access Fee for that month or year (as applicable) will continue to be due and payable in advance (in accordance with clause 3.1), unless either party terminates these Terms by giving notice to the other party before the end of the initial subscription period or the relevant Renewal Period (as applicable). If insufficient notice is given then:

- a. if Your subscription renews on a monthly basis, Your subscription will not be cancelled until the next Renewal Date;
- b. if Your subscription renews on an annual basis then, provided Your notice is received by Superstar Software Limited no later than seven days following the Renewal Date, Superstar Software Limited will accept Your notice of cancellation and will refund the Access Fees already paid by You in relation to the new Renewal Period. If Your notice is received by Superstar Software Limited more than seven days after the Renewal Date then Superstar Software Limited will accept Your notice of cancellation and may then

choose (in its sole discretion) to refund some or all of the Access Fees already paid by You that relate to the unused portion of the new Renewal Period.

8.4 Overdue:

- a. Access Fees are paid in advance, however in the event that Your account becomes overdue Superstar Software Limited will suspend Your subscription and Your rights to access the Services. The Billing Contact will be notified once an account becomes overdue.
- b. If You have subscribed to the Services via a Superstar Software Limited Partner then that Superstar Software Limited Partner may also request that Your account be suspended due to non-payment. In the event such a request is made Superstar Software Limited will endeavour to contact You to confirm this and an in-application message will be posted for all Users to see before Your account is suspended.

8.5. Breach:

If You:

- a. breach any of these Terms (including by non-payment of any Access Fees) and do not remedy the breach within thirty days after receiving notice of the breach if the breach is capable of being remedied;
- b. breach any of these Terms and the breach is not capable of being remedied; or
- c. You are declared bankrupt or You become bankrupt, insolvent, or You go into liquidation or a receiver or manager is appointed over any of Your assets, or You make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

then (without limiting Superstar Software Limited's suspension rights at clause 8.4 above)

Superstar Software Limited may take any or all of the following actions, at its sole discretion:

- i. terminate this Agreement and Your right to access and use the Services;
- ii. suspend, for any definite or indefinite period of time, Your right to access and use of the Services;
- iii. suspend or terminate Your access to any or all data through the Services; or
- iv. delete Your Data in accordance with clause 5.6.

8.6. Accrued Rights:

Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:

- a. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- b. immediately cease to use the Services.

8.7. Expiry or Termination:

Those clauses which by their nature survive expiry or termination, including clauses 3.1, 4, 5, 6, 7, 8 and 10, will survive the expiry or termination of these Terms.

8.8. Refund Policy:

Superstar Software Limited does not provide refunds if You decide to stop using the Services at any time during Your Subscription Term.

9. HELP DESK

9.1. Technical Problems:

You have a right to technical support, in accordance with the Customer Service Plan on Your subscription. When you have accepted these Terms but do not have a Subscription technical support may be less expedient, or may not occur at all.

9.2. Service Availability:

Whilst Superstar Software Limited intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services may be unavailable to permit maintenance or other development activity to take place. If for any reason Superstar Software Limited has to interrupt the Services for any period, Superstar Software Limited will use reasonable endeavours to publish in advance details of such activity.

10. GENERAL

10.1. Entire Agreement:

These Terms, together with the Superstar Software Limited Privacy Policy and the Data Processing Agreement (where applicable) and the terms of any other notices or instructions given to You under these Terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Superstar Software Limited relating to the Services and Your access and use of the Services and the other matters dealt with in these Terms.

10.2. Waiver:

A waiver of any breach of any provision in these Terms shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

10.3. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

10.4. No Assignment:

You may not assign or transfer this Agreement or any of Your rights under this Agreement to another person without our prior written consent. The transfer of the billing ownership may be requested by contacting help@factorysuperstar.com. It is at the discretion of Superstar Software Limited to action this change over.

10.5. Force Majeure:

We shall be under no liability if we are unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing): Act of God, legislation, war, fire, flood, drought, epidemic, failure to power supply, lock out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure material or services required for the performance of the contract. During the continuance of such a contingency the buyer may by written notice to us elect to terminate the contract and pay for goods supplied, but subject thereto shall otherwise accept delivery when available.

10.6. Severance:

If any provision of these terms shall be held to be illegal or unenforceable, wholly or partially, such term or provision shall to that extent be deemed not to form part of the Contract but the validity and enforceability of the remaining terms shall not be affected.

10.7. Forbearance:

No forbearance or indulgence by the Company shown or granted to any customer whatsoever in respect of any of these terms or otherwise shall in any way effect or prejudice the rights of the Company or be taken as a waiver of any of these terms.

10.8. Conflict:

Where these terms and conditions in any way conflict with any terms on which the customer has purported to purchase goods from the Company the conditions printed above shall prevail.

10.9. No Waiver:

Failure of either Party to exercise or enforce any provision of or any of its rights under these Terms shall not be deemed a waiver of future enforcement of that or any other provision or right.

10.10. Jurisdiction:

These conditions shall be governed and construed by Scottish Law and the Scottish Courts shall have exclusive jurisdiction in connection herewith.

10.11 Binding Arbitration

10.11.1 Seat of Arbitration

Any dispute arising from the relationships between the Parties to this contract shall be determined by one arbitrator who will be chosen in accordance with the Arbitration and Internal Rules of the European Court of Arbitration being part of the European Centre of Arbitration having its seat in Strasbourg, and which are in force at the time the application for arbitration is filed, and of which adoption of this clause constitutes acceptance. The seat of arbitration shall be Glasgow, United Kingdom. The language of the proceedings shall be English. Applicable rules of substantive law shall be the law of the Scotland.

10.11.2 Restrictions on Arbitration

The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by law, (a) no arbitration shall be joined with any other proceeding; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilise class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

10.11.3 Exceptions to Arbitration

The Parties agree that the following Disputes are not subject to the above provisions concerning binding arbitration: (a) any Disputes seeking to enforce or protect, or concerning the validity of, any of the intellectual property rights of a Party; (b) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorised use; and (c) any claim for injunctive relief. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

10.12 Corrections

There may be information on the Site that contains typographical errors, inaccuracies, or omissions, including descriptions, pricing, availability, and various other information. We reserve the right to correct any errors, inaccuracies, or omissions and to change or update the information on the Site at any time, without prior notice.

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