Factor Apps – Licence Agreement

Offering	Factor Onboarding
Publisher	Factor Tech Pty Ltd, ABN 39 644 724 701
Publisher's Address	Level 3/490 Northbourne Avenue, Dickson, ACT, 2602
Governing Law	Australian Capital Territory
Term	As set out in the Order
Currency	As set out in the Order

Please read the following terms and conditions carefully before using the Offering provided by the Licensor. By using the Offering, you acknowledge that you have read, understood, and agree to be bound by the terms of this Agreement. If you do not agree to these terms, do not use the Offering.

The rest of the Agreement will follow on subsequent pages.

This Standard Contract ("Agreement") is between you ("you", "Customer", or "Licensee") and Factor ("us", or "Publisher") from which you are procuring Offerings (defined below) and governs your use of Offerings purchased from us or from Microsoft AppSource.

This Agreement is the parties' entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalised terms have the meanings given under "Definitions."

1. **Licence**

1.1 **Licence grant.** Offerings are licensed and not sold. Upon acceptance of an Order, and subject to Customer's compliance with this Agreement, Publisher grants Customer a nonexclusive and limited licence to use the ordered Offerings. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.

Offerings may contain or be provided with components that are subject to open-source software licenses. Any use of those components may be subject to additional terms and conditions and Customer agrees that any applicable licenses governing the use of the components will be incorporated by reference in this Agreement.

1.2 **Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed. Licenses granted for metered Offerings billed periodically based on usage continue as long as Customer continues to pay for its usage of the Offerings.

1.3 **End Users.** Customer will control access to and use of the Offerings by End Users and is responsible for any use of the Offerings that does not comply with this Agreement.

1.4 **Reservation of Rights.** Publisher reserves all rights not expressly granted in this Agreement. Offerings are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give Customer any right to implement Publisher's patents or other intellectual property in the device itself or in any other software or devices.

1.6 **Restrictions.** Except as expressly permitted in this Agreement, Documentation or an Order, Customer must not (and is not licensed to):

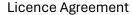   a. copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do so;

    b. operate, or attempt to operate, any Offering without each user of the application having an active licence, either assigned to the user or organisationally, where relevant;

    c. install or use any third-party software or technology in any way that would subject Publisher's intellectual property or technology to any other license terms;

    d. work around any technical limitations in an Offering or restrictions in Documentation;

    e. separate and run parts of an Offering on more than one device;

    f. upgrade or downgrade parts of an Offering at different times;

    g. use an Offering for any unlawful purpose;

    h. transfer parts of an Offering separately; or

    i. distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party.

1.7 **License transfers.** Customer may only transfer fully-paid, perpetual licenses to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (A) a divestiture of all or part of an Affiliate or (B) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Offering and render any copies unusable. Customer must notify Publisher of a License transfer and provide the transferee a copy of this Agreement and any other documents necessary to show the scope, purpose, and limitations of the licenses transferred. Attempted license transfers that do not comply with this section are void. Publisher reserves the right to amend the pricing at its discretion and license transfers without express permission from Publisher are prohibited.

1.8 **Feedback.** Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialise the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licenses under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

2.   **Privacy**

2.4   **Third-Party Services**. The Customer acknowledges that in order to provide the best possible service, the Publisher may utilise various third-party services to deliver capability available in the Offerings. These services may have their own terms and conditions and privacy policies, and the Customer agrees to comply with those when applicable. The Publisher does not control and is not liable for the security or performance of these third-party services. The Customer agrees that the Publisher is not liable for any loss or damage that may arise from the use of these third-party services.

2.5   **Telemetry Data**. The Customer acknowledges and agrees that the Publisher may collect and use Telemetry Data from installed instances of the application. This data will be used to aid in product development, improve user experience, and ensure adherence to licence conditions. The Telemetry Data collected will be in accordance with all applicable laws and regulations, and will not include any personally identifiable information unless explicitly provided by the Customer.

2.6   **Security**. Publisher will take appropriate security measures that are required by Data Protection Laws and in accordance with good industry practice relating to data security.

2.7   **Support Data**. Publisher may collect and use Support Data internally to provide technical support for the Offering. Publisher will not use Support Data for any other purpose unless otherwise agreed in writing by the parties.

3.   **Confidentiality**

3.1   **Non-Disclosure Agreement**. The parties will treat all confidential information exchanged between the parties under this Agreement in accordance with the separate nondisclosure agreement ("NDA") executed by the parties. If no separate NDA is in effect, the following provisions apply to the parties' exchange of confidential information.

3.2   **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, Support Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation;
 (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products, or services.

3.3   **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible

for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorised use or disclosure, must promptly notify the other party.

3.4   **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

3.5   **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted by Publisher; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

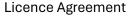4.   **Support and Service Level Agreements (SLA)**

Publisher may offer further availability and support obligations for an Offering. Such service level agreement ("SLA") will be made available by the Publisher at the applicable URL for such SLA or as otherwise communicated to Customer.

5.   **Verifying Compliance**

5.1   Customer must keep records relating to Offerings it and its Affiliates use or distribution. At Publisher's expense, Publisher may verify Customer's and its Affiliates' compliance with this Agreement by directing an independent auditor (under nondisclosure obligations) to conduct an audit or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that Publisher or the auditor reasonably requests related to the verification and access to systems running the Offerings. If verification or self-audit reveals any unlicensed use, Customer must order sufficient licences to cover the period of its unlicensed use. The audits may be conducted more frequently, if required by the party's auditors and/or regulators, of books and records related to this Agreement. The expenses for all such audit will be borne by the party conducting the audit. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

6.   **Representation and Warranties**

6.1   Publisher continuously represents and warrants that:

   a.   it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;

   b.   its performance will not violate any agreement or obligation between it and any third party;

   c.   the Offering will substantially conform to the Documentation;

   d.   the Offering will not:

    i.   to the best of Publisher's knowledge, infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or

    ii.   contain viruses or other malicious code that will degrade or infect any products, services, software, or Customer's network or systems

6.2   **Disclaimer.** Except as expressly stated in this Agreement, the Offering is provided as is. To the maximum extent permitted by law, Publisher disclaims any and all other warranties (express, implied or statutory, or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.
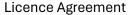
7.   Defence of Third-Party Claims

7.1   **By Customer.** Customer will defend Publisher and its Affiliates from and against any and all third party claims, actions, suits, proceedings arising from or related to: Customer's or any authorised user's violation of this Agreement or user terms (a "Claims Against Publisher"), and will indemnify Publisher and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against Publisher or its Affiliates in connection with or as a result of, and for amounts paid by Publisher or its Affiliates under a settlement Customer approves of in connection with a Claim Against Publisher. Publisher must provide Customer with prompt written notice of any Claims Against Publishers and allow Customer the right to assume the exclusive defence and control of the claim and cooperate with any reasonable requests assisting Customer's defence and settlement of such matter.

7.3   Notwithstanding anything contained in the above subsections (a) and (b), (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

8.   Limitation of Liability

For each Offering, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Offerings during the term of the applicable licenses, subject to the following:

    a.   **Subscriptions.** For Offerings ordered on a subscription basis, Publisher's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Offering in the month prior to the incident, or $10,000, whichever is lessor.

b. **No Indirect Damages.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

c. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's: (1) confidentiality obligations under Section 3 (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defence obligation under Section 7; (3) violation of the other party's intellectual property rights; or (4) gross negligence, wilful misconduct, or fraud.

9. **Pricing and Payment**

The Customer will be invoiced and charged under the terms of this agreement and the applicable Order.
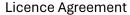
10. **Term and Termination**

10.1 **Term.** This Agreement is effective until terminated by a party, as described below. The term for each Order will be set forth therein.

10.2 **Termination without cause.** Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement. Publisher will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.

10.3 **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement or any Order immediately on notice if (i) the other party materially breaches the Agreement or an Order, and fails to cure the breach within 30 days after receipt of notice of the breach; or (ii) the other party becomes Insolvent. Upon such termination, the following will apply:

a. All licences granted under this Agreement will terminate immediately.
b. All amounts due under any unpaid invoices will become due and payable immediately. For metered Offerings billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.

10.4 **Suspension.** Publisher may suspend use of the Offering without terminating this Agreement during any period of material breach. Publisher will give Customer reasonable notice before suspending the Offering. Suspension will only be to the extent reasonably necessary.

10.5 **Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.
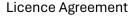
11. **Miscellaneous**

11.1 **Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:

    a. Order;

    b. this Agreement;

    c. Services Agreement;

    d. Support Agreement;

    e. Service Level Agreement (SLA); and

    f. Documentation.

11.2 **Amendments.** Unless otherwise agreed in a writing signed by both parties, Publisher will not change the terms of this Agreement, including privacy terms, during the term of this Agreement.

11.3 **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Publisher may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Furthermore, the Publisher may assign this Agreement without the consent of the other party in connection with a merger, reorganisation, acquisition, or other transfer of all or substantially all of such party's assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

11.4 **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

11.5 **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

11.6 **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

11.7 **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Publisher must be sent to the address stated in the Order.

Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. Publisher may send notices and other information to Customer by email or other electronic form.

11.8 **Order of precedence**. The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

11.11 **Compliance with laws**. Publisher will comply with all laws and regulations applicable to its provision of the Offerings. Publisher will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). Customer must also comply with laws applicable to their use of the Offerings.

11.12 **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to affect the parties' intent. Lists of examples following "including", "*e.g.*", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favour either party. Unless stated or context requires otherwise:

    a.   all internal references are to this Agreement and its parties;

    b.   all monetary amounts are expressed and, if applicable, payable, in Australian dollars;

    c.   URLs are understood to also refer to successors, localisations, and information or resources linked from within websites at those URLs;

    d.   a party's choices under this Agreement are in its sole discretion, subject to any implied duty of good faith;

    e.   "written" or "in writing" means a paper document only, except where email is expressly authorised;

    f.   "days" means calendar days;

    g.   "may" means that the applicable party has a right, but not a concomitant duty,

    h.   "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership;

i. "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured;

j. "notify" means to give notice under subsection (i) above; and

k. a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorised representative of the signing party.

12. **Definitions**

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Publisher or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Offering. Customer Data does not include Support Data.

"Documentation" means all user manuals, handbooks, training material, requirements, and other written or electronic materials Publisher makes available for, or that result from use of, the Offering.

"End User" means any person Customer permits to use an Offering or access Customer Data.

"Feedback" means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient's Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., feature lists) for future products.

"Insolvent" means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party's) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

"Offering" means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that Publisher makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Publisher to provide the foregoing. Offering availability may vary by region.

"Order" means an ordering document used to transact the Offering via the Marketplace.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.

"Subcontractor" means any third party: (1) to whom Publisher delegates its obligations under this Agreement, including a Publisher Affiliate not contracting directly with Customer through an Order; or (2) who, in performing under a contract between it and Publisher or a Publisher Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under this Agreement) or other Customer Confidential Information.

"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Publisher by or on behalf of Customer (or that Customer authorises Publisher to obtain from an Offering) through an engagement with Publisher to obtain technical support for the Offering covered under this Agreement.

"Use" means to copy, download, install, run, access, display, use or otherwise interact with.

"Telemetry Data" refers to all data that is automatically collected by the Publisher's systems. This data includes logs, metrics, events, and traces that are created by the Customer's applications. Telemetry Data collected from installed instances of the application is used to aid in product development, improve user experience, and ensure adherence to licence conditions.