

FabPro LLC
Terms of Service

These Terms of Service are between Company, as defined in the Proposal, and FabPro, LLC (FabPro), as defined in the Proposal. By agreeing to the Proposal, the Company is agreeing to these Terms of Service. Company also agrees that its employees and agents will be bound by these Terms of Service. Employees and agents of Company shall be required to agree to an End User License Agreement before being permitted to access and use the Software.

1. Definitions

- 1.1 “Data File” means one or more files which contain data that is input by the Users while accessing the Software.
- 1.2 “Implementation Fee” means the amount of money listed in the Proposal for implementation of the Software.
- 1.3 “License Fee” means the amount of money listed in the Proposal for the Software license.
- 1.4 “License Period” means the time period listed in the Proposal.
- 1.5 “Customization” shall mean those changes, requested by the Company and implemented by FabPro, that are listed in the Proposal.
- 1.6 “Generated Data” means any report created by a User from data in the Data File.
- 1.7 “Patches” means minor modifications to the Software that correct an existing problem and do not add any additional functionality. Patches are provided by FabPro at its discretion.
- 1.8 “Proposal” means the covering document for these Terms of Service and includes information on the Software, License Fee, License Period, and the number of licensed Users.
- 1.9 “Software” means the software and documentation listed in the Proposal.
- 1.10 “Support” means services provided by FabPro under these Terms of Service.
- 1.11 “Support Fee” means the amount of money listed in the Proposal for Support of the Software.
- 1.1 “System Data” means data generated by the Software, the underlying operating system, or other software through the accessing and use of the Software by Users.
- 1.12 “User” means a person authorized by the Company and approved by FabPro to uses the Software. The number of licensed Users is listed in the Proposal.
- 1.13 “Updates” means minor version changes to the Software provided by FabPro at its discretion. Updates do not include new modules or new software products.
- 1.14 “Upgrades” means major version changes to the Software provided by FabPro at its discretion. Upgrades do not include new modules or new software products.

2. Grant of License

- 2.1 FabPro grants Company the non-exclusive, non-sub-licensable, limited right a) to install and/or access one copy of the Software, whether installed on a computer or virtual machine owned or controlled by FabPro or the Company; and b) to permit up to the number of Users to access and/or use the Software for which the License Fee has been paid for the License Period.

2.2 FabPro grants Company the non-exclusive, non-sub-licensable, limited right to use the Software to make, reproduce, publicly display, distribute or otherwise use Generated Data, but only for Company's internal business purposes.

2.3 All rights not specifically granted under these Terms of Service are reserved by FabPro.

3. Restrictions

3.1 Company agrees, except as expressly permitted in the License, the Software may not be used, copied, translated, redistributed, retransmitted, published, sold, leased, marketed, sublicensed, assigned, disposed of, encumbered, transferred, altered, modified or enhanced, whether in whole or in part. Company may not remove any proprietary notices, marks or labels from the Software.

3.2 No license is granted to System Data or the source code for the Software. Company agrees not to reverse-engineer, de-compile or disassemble the Software, or make any attempt to discover the source code to the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

3.3 Company agrees to not attempt to break or evade any access controls, copy-control protections or encryption utilized in the Software.

3.4 Company agrees not to assist others in doing what the Company is prohibited from doing.

4. Implementation Upon payment of the Implementation Fee, FabPro shall undertake the services set forth in the Proposal related to installation of the Software.

5. Training Company may use FabPro's web-based training resources at Company's discretion and may utilize other FabPro training resources as set forth in the Proposal.

6. Customization Any Customization carried out by FabPro is covered under these Terms of Service, the cost quoted by FabPro and the cost covered by the Company.

7. Maintenance If the Software is installed on a computer or virtual machine owned or controlled by FabPro, then FabPro shall be responsible for maintaining the computer or virtual machine on which the Software is installed. Otherwise, the Company shall be responsible for maintaining the computers or virtual machines on which the Software is installed.

8. Back-ups If the Software is installed on a computer or virtual machine owned or controlled by FabPro, FabPro shall be responsible for performing back-ups the Software, the Data File, and System Data. Back-ups of the Data File shall be done nightly by FabPro and kept for seven days. If Company desires to maintain its backed-up the Data File for periods longer than seven days, it must arrange separate storage for itself.

9. Support

9.1 Company may make unlimited number of Support Requests. FabPro will thoroughly investigate all problems reported by Company. If the problem is a Technical Issue with the Software, FabPro will make commercially reasonable efforts to correct the Technical Issue and FabPro will provide: a) a solution; b) confirmation that the Software works per design specifications; or c) confirmation that the problem will not be fixed.

9.2 FabPro shall provide Support via telephone, email, and remote diagnosis and access tools during regular business hours (8:00 am - 5:00 pm Central Time) Monday through Friday except holidays. FabPro support staff may provide Support for Technical Issues outside of regular business hours at its discretion or as otherwise agreed to by the Company. FabPro shall not be required to provide in-person Support and shall use remote diagnosis tools to deliver Support. To receive Support, Company shall authorize FabPro's use of remote diagnosis tools and access to Company's computers and networks.

9.3 FabPro has no obligation to support: a) Software that has a Company Customization or has been altered by a third party; b) any problem that is not a Technical Issue; c) third-party software; 4) Company's backup procedures; d) hardware, or e) interconnectivity of the Software with third party software.

9.4 Support Requests will be prioritized by severity and handled in the order of most severe to least severe, with Technical issues ahead of other problems and questions. Priority is assigned in descending severity: the Software unavailable for processing; a portion of the Software is unavailable; operational questions that are holding up processing; operational questions that do not interfere with normal processing; enhancement suggestions/requests and requests for custom applications.

10. Patches, Updates, Upgrades and Customizations Company shall have the right to receive Patches, Updates, Upgrades and/or Customizations as set forth in the Proposal. Patches, Updates, Upgrades and Customizations shall be considered part of the Software.

11. Availability of the Software

11.1 If the Software is installed on a computer or virtual machine owned or controlled by FabPro, then the Software will be available for use and access by Users 24 hours a day, 7 days a week, except a) for scheduled and noticed maintenance to take place at commercially reasonable times, and b) for violations of FabPro's acceptable use policy.

11.2 If the Software is installed on a computer or virtual machine owned or controlled by the Company, then the Company shall be sole responsible for the availability of the Software, subject to the Support provided by FabPro.

12. Responsibilities of the Company

12.1 The Company shall designate one primary contact and one backup contact, who will interact with the FabPro. FabPro need not respond to or interact with any Company employee or agent except the primary and backup contacts. The primary and backup contacts shall have sufficient technical skill and knowledge of Company's computer systems and the Software to be able to assist FabPro in resolving Technical Issues.

12.2 When reporting a Technical Issue, Company shall provide as accurate and complete description as possible and shall assist in Technical Issue resolution by providing FabPro with reasonably requested information.

12.3 Company should maintain daily backups of its Data File.

12.4 Company shall allow, and not otherwise interfere with, remote access by FabPro to the Software so that FabPro can monitor the Data File and collect System Data for the License Period.

13. Ownership

13.1 Title, ownership rights and intellectual property rights in and to the Software and System Data shall remain with FabPro. The Software is licensed, not sold.

13.2 Title, ownership rights and intellectual property rights in the data stored in the Data File shall remain with Company. Company grants FabPro a license to use the Data File, and the data in the Data File, for: a) internal business purposes to evaluate the use and operation of the Software; and b) marketing purposes provided that any information shared with third parties is anonymized and/or aggregated so that Company cannot be identified from the information.

14. Transfer of Software Company shall not transfer its rights under these Terms of Service without prior written consent from FabPro, where such consent shall not be unreasonably withheld.

15. Termination of License These Terms of Service is in effect until terminated or the end of the License Period. Company may terminate it at any time by destroying or uninstalling the Software installed on computers or virtual machines it owns or controls.. FabPro may terminate these Terms of Service if Company fails to comply with

these Terms of Service. FabPro is not obligated to provide an opportunity to cure. Upon termination or the end of the License Period, Company agrees: a) that FabPro may terminate access to the Software without warning, and b) to destroy the Software.

16. Reports and Audit Rights Company shall institute reasonable measures to ensure compliance with the terms and conditions of these Terms of Service. Company acknowledges that FabPro may monitor the Data File and collect System Data in real time via remote access and produce reports relating to Company's access and use of the Software. Upon reasonable request, Company agrees to provide reports, and access to Company's facilities and records, relating to Company's use of the Software as necessary to demonstrate Company's compliance with these Terms of Service. Interference with an audit by Company is grounds for termination of these Terms of Service.

17. Software Limited Warranty To the original customer only, FabPro provides the following warranties:

17.1 Limited Warranty FABPRO WARRANTS THAT FOR AS LONG AS THESE TERMS OF SERVICE ARE IN PLACE BETWEEN FABPRO AND COMPANY ("WARRANTY PERIOD") AS EVIDENCED BY COMPANY'S RECEIPT OR OTHER PROOF OF PURCHASE a) THE SOFTWARE, UNLESS MODIFIED OR OTHERWISE ALTERED BY COMPANY, WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED SPECIFICATIONS FOR THE SOFTWARE, AND b) THE MEDIA ON WHICH THE SOFTWARE IS FURNISHED, IF ANY, WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE. FabPro does not warrant that the Software will meet Company's requirements or that Use of the Software will be uninterrupted or error-free. FabPro is not responsible for problems caused by changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the Software, nor for problems in the interaction of the Software with non-FabPro software. Some jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Company. The Limited Warranty gives Company specific legal rights. Company may have others.

17.2 Exclusive Remedy FabPro's entire liability, and Company's exclusive remedy, shall be, at FabPro's option, either a) replacement of the defective media, b) repair or replacement of the Software that does not meet FabPro's Limited Warranty, or c) return of the License Fee paid and termination of these Terms of Service. This remedy is subject to return of the Software to FabPro with a copy of Company's receipt within the Warranty Period or, solely for Software that was obtained electronically via "electronic software distribution", to delivery to FabPro of a FabPro -approved "certification of destruction" together with proof of purchase within the Warranty Period. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or thirty days, whichever is longer.

17.3 Further Warranties

17.3.1 FabPro warrants that it owns the Software or otherwise has sufficient rights to grant Company the license in these Terms of Service.

17.3.2 For installations of the Software on computers or virtual machines that FabPro owns or controls, FabPro warrants that it owns or otherwise has sufficient rights to grant Company access to the Software on those computers or virtual machines.

17.3.3 FabPro warrants that, at the time of these Terms of Service, it is not aware of claims that the Software infringes any right of a third party

17.4 No Other Warranties THE ABOVE WARRANTIES ARE EXCLUSIVE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FABPRO AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND THOSE ARISING OUT OF USAGE OF TRADE OR

COURSE OF DEALING, CONCERNING THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT UNDER A SUPPORT AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FABPRO, ITS AGENTS, DEALERS, DISTRIBUTORS OR EMPLOYEES SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY OTHER WARRANTIES.

17.5 No Liability for Damages EXCEPT FOR THE EXPRESS REMEDIES AND INDEMNITIES PROVIDED TO THE COMPANY UNDER THESE TERMS OF SERVICE, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FABPROOR ITS SUPPLIERS (OR THEIR RESPECTIVE AGENTS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES) BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION TO: CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, ECONOMIC, PUNITIVE OR SIMILAR DAMAGES, OR DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, LOSS OF BUSINESS INFORMATION OR ANY AND ALL OTHER COMMERCIAL OR PECUNIARY DAMAGES OR LOSSES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT , HOWEVER CAUSED AND ON ANY LEGAL THEORY OF LIABILITY (WHETHER IN TORT, CONTRACT OR OTHERWISE), EVEN IF FABPROHAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. COMPANY ACKNOWLEDGES THAT THE LICENSE FEE REFLECTS THIS ALLOCATION OF RISK. In any event, if any statute implies warranties or conditions not stated in these Terms of Service, FabPro's entire liability under any provision of these Terms of Service shall be limited to the greater of the amount actually paid by Company to license the Software and Five United States Dollars (US\$5.00), or, in the case of a Support Agreement, providing such Support again or refunding the cost thereof. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to Company.

17.6 Infringement Indemnity FabPro shall defend, indemnify, and hold Company harmless from and against any loss, liability, cost, or expense, including reasonable attorney's fees, which may be incurred by Company against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. copyright or trademark, provided: a) Company promptly notify FabPro in writing of the claim; b) Company provide documents clearly describing the allegations of infringement; c) FabPro has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and d) Company cooperates fully in the defense of the claim.

17.6.1 If the Software is found to infringe a U.S. copyright or trademark, FabPro shall, in its sole discretion, take commercially reasonable steps to obtain the necessary rights or modify the Software. In the alternative, FabPro may terminate these Terms of Serviceand Company shall uninstall the Software. FabPro's liability shall then be to indemnify Company as above and refund a pro-rata portion of any License Fee paid by Company for the Software. No refund shall be paid for any price paid by Company for Support under a Support Agreement.

17.6.2 FabPro shall have no obligation to defend Company or to pay any resulting costs, damages, or attorneys' fees for any claims alleging direct or contributory infringement of the Software by a) combination of or integration with a product, process, or system not supplied by FabPro; b) material alteration by anyone other than FabPro; c) use after Company have been notified of possible infringement; or d) use after modifications are provided or these Terms of Serviceis terminated.

17.7 Failure to Maintain Back-up Hold Harmless Company shall hold FabPro harmless from and against any loss, liability, cost, or expense, including reasonable attorney's fees, which may be incurred by Company due to Company's failure to maintain its backed-up Data File for periods longer than seven days.

18. Confidentiality

18.1 Each party agrees to keep confidential the terms and provisions of these Terms of Service and any other information with respect to the relationship among the parties; provided, however, that a party may reveal such information as required a) by law, regulation or court order, or b) in connection with such party's performance of its obligations under these Terms of Service.

18.2 Each party acknowledges that it will be provided with, or have access to, Proprietary Information belonging to the receiving party. The receiving party agrees to not: a) disclose Proprietary Information to any third party, except to the extent necessary to carry out the purpose of these Terms of Service; b) use or copy any Proprietary Information for any purpose other than for carrying out the purpose of these Terms of Service; or c) use Proprietary Information in any way adverse to the disclosing party's interests.

18.3 Proprietary Information is defined as any and all information not generally available to the public, and includes without limitation, all information related support, service level agreement, pricing, payment terms, customer lists, vendor lists, the Data File, data in the Data File, System Data, the Software and any other information that is a trade secret.

18.4 Proprietary Information shall not include information: a) already in the possession of the receiving party at the time of disclosure; b) already in the public domain at the time of disclosure; c) that becomes part of the public domain through no fault of the receiving party; or d) that was obtained in good faith by the receiving party from a third party on a non-confidential basis.

18.5 The receiving party agrees to destroy all Proprietary Information, including from backup archives, upon request from the disclosing party or upon expiration or termination of these Terms of Service. The receiving party shall not retain any copies of Proprietary Information and shall certify the destruction of same.

18.6 The receiving party agrees that its duties regarding use of Proprietary Information under these Terms of Service: a) do not cease with the expiration or termination of these Terms of Service; and b) cease only if the information no longer meets the definition of Proprietary Information.

19. Entire Agreement The Proposal and these Terms of Service constitutes the entire agreement between FabPro and Company with regard to the Software and supersedes any and all prior agreements on this topic. These Terms of Service shall not be modified except by a written agreement between authorized representatives of FabPro and Company.

20. Severability If a court of competent jurisdiction determines that a provision of these Terms of Service is unenforceable in any jurisdiction, then such provision shall be deemed modified to the minimum extent necessary to make it comply with the applicable law of such jurisdiction.

21. Governing Law These Terms of Service is governed by the laws of the State of Iowa and applicable U.S. federal law and the state and federal courts located in Cedar Rapids, Iowa, USA shall have exclusive jurisdiction and venue over any claim arising from these Terms of Service.