

Industriality App Platform – Standard Software License Subscription Agreement

This Software License Subscription Agreement (“Agreement”) is a contract between Industriality (“Industriality,” “we,” “us”), and you (“Customer” or “You”) as of the date mentioned above (the “Effective Date”). Industriality and Customer are sometimes referred to collectively as the “Parties” and individually as a “Party.”

PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS IMPORTANT TERMS GOVERNING YOUR USE OF THE INDUSTRIALITY APP PLATFORM, AND ANY FEEDBACK (DEFINED BELOW) YOU PROVIDE TO US. BY SIGNING THE CONTRACT OR STATEMENT OF WORK, USING THE INDUSTRIALITY APP PLATFORM OR BY PROVIDING ANY FEEDBACK TO US, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

1. DEFINITIONS

“Account” means a single entity of the Customer so Customer’s Authorized Users can access Assets, Systems and other Resources and use the Industriality App Platform.

“Authorized Users” are the employees, agents, or other designees who have been identified by Customer and given access to the Industriality App Platform.

“Apps” means applications or user interface such as dashboards, forms, graphs, charts provided by Industriality

“Assets” means machines, manufactured by manufacturer, connected and managed in Industriality’s App Platform

“Systems” means collection of Assets, assembled by system integrator and managed and viewed by Industriality’s App Platform

“Part” means a component of machine, made by supplier or manufacturer that is managed by Industriality’s App Platform

“Data” means any data or information input into or collected through or by the Industriality App Platform.

“Feedback” means information and feedback, including, without limitation, questions, comments, suggestions, or the like, regarding the performance, features, functionality and overall Customer experience using the Industriality App Platform or any of the Industriality services.

“Industriality Software” or “Industriality App Platform” means the software provided by Industriality under this Agreement, together with any improvements, updates, bug fixes or upgrades thereto.

“Subscription” refers to any of the subscription plans for access and use of the Industriality App Platform on an annual or other periodic basis based on Systems, Assets, Apps, Authorized Users.

2. RIGHTS AND RESTRICTIONS

- a. **Rights.** Industriality hereby grants to Customer a limited, restricted, nonexclusive, nontransferable, non-sublicensable, revocable right during the Term to:
 - i. access and use the Industriality App Platform, its features and apps and any associated solutions that interact with the Industriality App Platform (the “Industriality App Platform”) as described in the subscription plan; and
 - ii. invite and enable Authorized Users to access and use the Industriality App Platform, as described in the subscription plan, during the Subscription. Customer is responsible for all Authorized Users’ compliance with this Agreement.
 - iii. connect assets to Industriality App Platform and store data, metadata, timeseries telemetry data in Industriality’s database.
 - iv. install and use the Industriality Edge Software, in respect to any Software that is distributed or provided to Customer for use on Customer premises or devices
- b. **Restrictions.** During the Subscription, Customer will not use the Industriality App Platform in any manner or for any purpose other than as expressly permitted by this Agreement. Customer will not publicly display, reverse engineer, modify, benchmark, download or distribute the Industriality App Platform. Customer will not decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to Services (“Software”); modify, translate, or create derivative works based on Services or any Software (except to the extent expressly permitted by Industriality or authorized within Services); use Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third-party; or remove any proprietary notices or labels. Customer will not use the Industriality App Platform outside of their division, without prior approval.
- c. **Changes to the Industriality App Platform.** Industriality may change the Industriality App Platform from time to time, including changing or removing features or functionality, upgrades and software updates from the Industriality App Platform. Industriality will notify Customer of any discontinuation of the Industriality App Platform.
- d. **Suspension of the Industriality App Platform.** Industriality may, in its sole discretion, immediately temporarily suspend access to or use of the Industriality App Platform by Customer or any Authorized User if Customer or any Authorized User violates a material restriction or obligation of Customer or Authorized Users in this Agreement, or if in Industriality’s reasonable judgment, the Industriality App Platform or any component thereof is about to suffer a significant threat to security or functionality. Industriality will provide advance notice to Customer of any such suspension in Industriality’s reasonable discretion based on the nature of the circumstances giving rise to the suspension. Industriality will use reasonable efforts to re-establish the affected Industriality App Platform promptly after Industriality determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured. Industriality may terminate access to the Industriality App Platform if any of the foregoing causes of suspension are not cured within thirty (30) days after Industriality’s initial notice thereof. Any suspension or termination by Industriality under this Section 2(d) will not excuse Customer from its obligation to make payment(s) under this Agreement. If any Authorized User breaches any term or condition of the Policies, then, in addition to any other remedies available to Industriality, Industriality will have the right, in its sole discretion, to immediately suspend access to the Industriality App Platform by the Authorized User who failed to comply with the terms and conditions of the policies. Any suspension under this Section shall remain in effect until the applicable breach, if curable, is cured.

3. TERM AND TERMINATION

- a. **Term.** The term of this Agreement will commence on the Effective Date and will continue for so as long as a Subscription Period is in effect unless and until terminated (the "Term").
- b. **Termination.** If either Party commits a material breach of or default under this Agreement, then the other Party may give notice that the breach or default has occurred (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default, and the action required to cure the breach or default) and that the Term will terminate pursuant to this Section 3(b) if the breach or default is not cured within thirty (30) days after receipt of notice (or such later date as may be specified in such notice). If the specified breach or default is not cured within thirty (30) days after receipt of such notice (or such later date as may be specified in such notice), then the Term will terminate. Notwithstanding the foregoing, Customer's failure to pay the Fees in a timely manner constitutes a material breach and must be paid within ten (10) days of Industrility's notice to Customer, and if such Fees are not paid, Industrility will terminate the Term.
- c. **Effect of Termination.** In the event of any termination of the Term:
 - i. all of Customer's and each Authorized User's rights under this Agreement will immediately terminate, the license granted to Customer in this Agreement will terminate and Customer and all Authorized Users will immediately cease any access or use of the Industrility App Platform;
 - ii. if Industrility terminates the Term for material breach by Customer under Section 3(b), then Customer will remain responsible for the remaining balance of the Fees plus related taxes and expenses;
 - iii. Industrility will permit Customer to access the Industrility App Platform for thirty (30) days after the Effective Date of termination solely in order to remove any Customer Data from the Industrility App Platform. Thereafter, Industrility will have no obligation to maintain any Customer Data or to forward any Customer Data to Customer or any third party; and
 - iv. Sections 1, 2(b), 3(c)(iv), 4, 7 through 11 of this Agreement, together with any other provisions that by their nature are intended to survive, will continue to apply in accordance with their terms.

If Customer terminates the Term for material breach by Industrility under Section 3(b), then Industrility shall refund to Customer within thirty (30) days of termination any unused pre-paid Fees on a pro rata basis for the remaining Term following the month in which the termination is effective.

4. FEES, PAYMENTS AND TAXES

- a. **Industrility Subscriptions.** Industrility offers different subscription plans for access and use of the Industrility App Platform (each, a "Subscription") on an annual or other periodic basis, as identified in Customer's administrator Account (the "Subscription Period"). Customer will pay the fees for its Subscription to the Industrility App Platform as specified in the applicable Subscription plan ("Fees").
- b. **Cancellation Policy.** CUSTOMER MAY CANCEL ITS SUBSCRIPTION UPON AT LEAST THIRTY (30) DAYS' BUT NOT MORE THAN FORTY-FIVE (45) DAYS' NOTICE PRIOR TO THE END OF THE THEN CURRENT SUBSCRIPTION PERIOD BY CONTACTING INDUSTRILITY AT support@industrility.com. CUSTOMER WILL BE RESPONSIBLE FOR ALL CHARGES (INCLUDING ANY APPLICABLE TAXES AND OTHER CHARGES) INCURRED WITH RESPECT TO FEES PROCESSED PRIOR TO THE CANCELLATION OF CUSTOMER'S SUBSCRIPTION. WITHOUT LIMITING THE FOREGOING, EXCEPT AS OTHERWISE SET FORTH IN SECTION 4(a) WITH RESPECT TO CUSTOMER'S TERMINATION FOR INDUSTRILITY'S MATERIAL BREACH OF THIS AGREEMENT, CUSTOMER WILL NOT RECEIVE A REFUND FOR ANY PARTIAL SUBSCRIPTION PERIOD OR ANY RENEWAL THAT OCCURS DURING THE THIRTY DAY NOTICE PERIOD.
- c. **Payment Terms.** Industrility will issue an invoice for the total amount of the Fees for the entire Subscription Period. Customer will pay invoiced Fees at the address or account for Industrility set forth on the applicable invoice within thirty (30) days of Customer's receipt of the corresponding invoice. Unpaid amounts are subject to a finance charge of 2.5% per month on any outstanding balance, or the maximum permitted by law, whichever is higher, plus all expenses of collection and may result in immediate termination of Service.
- d. **Pricing and Availability.** All prices are shown in U.S. dollars and applicable taxes and other charges, if any, are additional. Industrility reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of each Subscription Period, upon thirty (30) days prior notice to Customer (which may be sent by email). Notwithstanding anything to the contrary in Section 3, if Industrility exercises its rights under this Section 4, Customer may cancel its subscription any time between receipt of the notice and the renewal date of the Subscription.
- e. **Taxes and Exchange Fees.** Customer is responsible for any sales, duty or other governmental taxes or fees, exchange rates, foreign transaction fees, wire fees due with respect to Customer's purchase of a Subscription. Industrility will collect applicable sales tax if it determines that Industrility has a duty to collect sales tax. Several factors may cause this, such as variances between processor programs and changes in tax rates.

5. DATA

- a. **Software as a Service.** In connection with the Industrility App Platform, Industrility will collect Data and use, store, process, and maintain such Data. Customer will own all Data and hereby instructs and authorizes Industrility to use Data to provide services to and communicate with Authorized Users about their Assets through Apps and Industrility apps, products and services; and to monitor the performance of the Industrility App Platform, improve the Industrility App Platform, and to develop new apps, product and service offerings. Industrility reserves the right to: (i) disclose Data where required by applicable law or court order, (ii) store Data using third party providers on physical servers in the United States (iii) use such information and data to improve and enhance Services and for other development, diagnostic and corrective purposes in connection with Services and other Industrility's offerings, (iv) disclose such data solely in aggregate or other de-identified form in connection with its business. Customer hereby grants to Industrility a perpetual, irrevocable, nonexclusive license to collect, use, store, process and maintain Data via third parties as authorized.

6. FEEDBACK

Customer and Authorized Users may provide Industrility with Feedback or data derived from Customer Data. Any such feedback that Customer or Authorized Users provide to Industrility may or may not be treated confidentially by Industrility and will become the sole property of Industrility. Industrility will own, and Customer and Authorized Users hereby assign to Industrility, all exclusive rights, resulting in services and software, improvements, enhancements or modifications thereto, including, without limitation, all intellectual property rights in and to Feedback. Industrility will be entitled to the unrestricted use and dissemination of Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to Customer or any Authorized Users.

7. CONFIDENTIAL INFORMATION

- a. Confidential Information shall be governed by the Non-Disclosure Agreement, previously signed and agreed to by the Parties. If parties have not executed a Non-Disclosure Agreement, the following terms apply:
 - i. You shall not disclose to any person or entity any information about the Industrility App Platform, the Feedback or other results of your access or use of the Industrility App Platform or any other confidential information of Industrility that becomes known to you.
 - ii. Your obligation to maintain the confidentiality of such information shall not apply to information that (i) was known to you before receiving such information, or (ii) is received by you from a third party who was legally entitled to make an unrestricted disclosure.

8. DISCLAIMER

THE INDUSTRILITY APP PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND MAY CONTAIN DEFECTS. THE INDUSTRILITY APP PLATFORM IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER SHOULD TAKE APPROPRIATE STEPS TO SAFEGUARD IMPORTANT DATA USED IN CONNECTION WITH OR INPUT INTO THE INDUSTRILITY APP PLATFORM. CUSTOMER HEREBY WAIVES, RELEASES, AND DISCLAIMS, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE INDUSTRILITY APP PLATFORM OR RESULT INCLUDING ANY WARRANTY THAT THE INDUSTRILITY APP PLATFORM WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR CUSTOMER DATA PROVIDED BY CUSTOMER OR A THIRD PARTY WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, INDUSTRILITY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES WILL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND INDUSTRILITY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO INDUSTRILITY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT INDUSTRILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. INDEMNIFICATION

- a. **By Customer.** Customer will defend, indemnify, and hold harmless the Industrility Parties from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party or Authorized User claim concerning:
 - i. Customer's or Authorized Users' unauthorized use of the Industrility App Platform including, without limitation, any use of the Industrility App Platform other than as permitted under this Agreement;
 - ii. any Customer Data or other data or content related to Customer or Authorized Users which Customer provides, uploads, or inputs into the Industrility App Platform; or
 - iii. the combination of the Customer Data with other applications, content or processes.
- b. **By Industrility.** Industrility will defend, indemnify, and hold harmless Customer from and against all claims, damages, losses, liabilities, costs, and expenses arising out of or relating to any third-party claim that alleges that the Industrility App Platform infringes, misappropriates, or violates any United States patent, United States trademark or United States copyright or trade secret

11. MISCELLANEOUS

- a. **Independent Contractors.** Each Party is an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the Parties or as imposing any partnership or agency obligations or liability upon either Party. Further, neither Party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other Party.
- b. **Assignment.** Customer may not assign this Agreement or any right, interest or benefit under this Agreement without prior written consent of Industrility. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by any permitted assignee.
- c. **Severability.** If any provision of this Agreement is deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.
- d. **Applicable Law.** This Agreement, and any dispute between the parties related to this Agreement, will be governed by the laws of the State of Washington and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. Each party consents to the exclusive jurisdiction and venue of any federal court located in Seattle, Washington.
- e. **Entire Agreement.** This Agreement, together with any agreement or other policy or guideline referenced in this Agreement, constitutes the complete and exclusive statement of all mutual understandings between the Parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.