

FACTORFOX

END USER TERMS OF USE

Effective date: February 1, 2019

Thank you for using the FactorFox software or web-based application (collectively, the “Service”). The Service is provided by FactorFox Software, LLC, a Washington limited liability company (“FactorFox,” “We,” “Us,” or “Our”) pursuant to your agreement to these Terms of Use (the “Terms”). You must, and hereby do, agree to these Terms to use or access the Service in any way. As used herein, the word “you” means you as an individual user and anyone who uses your Account (as defined below).

FactorFox reserves the right to modify, revise, or replace these Terms at any time. Amendments will take effect immediately upon us posting the updated Terms on our Service. You are encouraged to revisit these Terms often in order to review any changes that have been made. The effective date of the most recent version of the Terms will be noted at the top of the document. Your continued access and use of our Service following the posting of any such changes shall automatically be deemed your acceptance of all changes.

1. Use of the Service

- (a) The Service provides cloud-based factoring services and may be provided through a third party other than FactorFox (the “Third Party Factor”). These Terms will apply even if the Services have been branded differently.
- (b) To use the Service, you may be required to register for an account (your “Account”). When you register for an Account, you may be required to provide FactorFox with some information about yourself (such as your e-mail address, credit card number or other information regarding your method of payment, mailing address and other contact information). You may also be required to provide FactorFox with information about you, which may be of a confidential nature and may include personal identifying information and/or financial information (“Your Information”). If you provide Your Information to FactorFox then you agree to provide true, current, complete and accurate information, and not to misrepresent your identity. You also agree to keep Your Information current and to update Your Information if any of Your Information changes. Our collection, the use and disclosure of Your Information is governed by these Terms and our Privacy Policy. Your Information may be shared with the Third Party Factor.
- (c) Your Account is for your own personal use only. You may not authorize or allow others to use your Account. You may not use your Account for commercial purposes. Under no circumstance shall FactorFox be responsible for unauthorized use of your Account. You agree to keep your login credentials private and confidential at all times.

(d) By using the Service in any way, you represent and warrant that:

- you are 18 years or older if required in your jurisdiction;
- you are legally permitted to use the Service and will use the Service in compliance with all laws and regulations;
- all information that you submit upon registration is accurate, complete, and truthful and will be maintained as such;
- you will not modify, index, scrape, hack, change, alter, or tamper with the Service in any way;
- you are not located in, under the control of, or a national or resident of any country which the United States has (a) embargoed goods, (b) identified as a “Specially Designated National”, or (c) placed on the Commerce Department’s Table of Deny Orders; and

(e) The Terms will remain in full force and effect at any time that you have an Account. FactorFox, the Third Party Factor, or you may terminate your Account and your access to the Services at any time.

(f) FactorFox reserves the right (at any time and in its sole discretion) to modify or discontinue, temporarily or permanently, the Service, or your use of such, with or without notice. You agree that FactorFox shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service. To protect the integrity of the Service, FactorFox reserves the right at any time in its sole discretion to block visitors and users from certain IP addresses from accessing any portion of the Service.

2. User Content

(a) You hereby grant FactorFox a license to use any images, sounds, text, videos, or other content you upload or post to the Service (collectively, “Content”) in order to provide the Service. We reserve the right, but not the obligation, to modify or delete any Content at any time without notice.

3. Intellectual Property

(a) You acknowledge that all copyrights, trademarks, service marks, trade dress, and other intellectual property used in the Service are property of FactorFox or its licensors and that no license, assignment, or sale of intellectual property has been offered to you. You agree not to use any of the intellectual property associated with the Service, or derivatives thereof, including (but not limited to) the name “FactorFox,” for any purpose other than those expressly permitted in these Terms. FactorFox retains full rights to all intellectual property used in connection with the Service.

- (b) You agree not to use the Service to share, copy, transmit, sell, or otherwise any intellectual property to which you do not have the express right to distribute.

4. Software

- (a) The software component of the Service is licensed, not sold. Unless we notify you otherwise, the software license ends when your Account is terminated.
- (b) The software is subject to applicable U.S. export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users, and end use. Without limitation, you may not transfer the software or Service without U.S. government permission to anyone on U.S. government exclusion lists. You represent and warrant that you are not on any of those lists or under the control of or an agent for anyone on those lists or the entities listed above.

5. Disclaimers; No Warranties

- (a) OUR CONTENT AND ALL SERVICES AND PRODUCTS ASSOCIATED WITH OUR SERVICES ARE PROVIDED TO YOU ON AN “AS-IS” AND “AS AVAILABLE” BASIS. WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF OUR SERVICES OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES INCLUDED ON OR ASSOCIATED WITH OUR SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF OUR SERVICES AND ALL PRODUCTS AND SERVICES INCLUDED ON OR ASSOCIATED WITH OUR SERVICES IS AT YOUR SOLE RISK.
- (b) WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THIRD-PARTY SERVICE PROVIDERS THAT WE MAY USE IN THE OPERATION, PROCESSING AND ADMINISTRATION OF THE SERVICES. WE DO NOT MAKE, AND EXPRESSLY DISCLAIM, ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, CORRECTNESS, OR COMPLETENESS OF THE CONTENT OR THE SERVICES AND PRODUCTS ASSOCIATED WITH OUR SERVICES, OR THE SAFETY, RELIABILITY, TITLE, TIMELINESS, COMPLETENESS, MERCHANTABILITY, CONFORMITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE CONTENT OR THE SERVICES AND PRODUCTS ASSOCIATED WITH OUR SERVICES.
- (c) WE MAKE NO REPRESENTATION, WARRANTY OR GUARANTEE THAT THE CONTENT THAT MAY BE AVAILABLE FOR DOWNLOADING FROM OUR SERVICES IS FREE OF INFECTION FROM ANY VIRUSES, MALICIOUS SOFTWARE OR OTHER CODE OR COMPUTER PROGRAMMING ROUTINES THAT CONTAIN CONTAMINATING OR DESTRUCTIVE PROPERTIES OR THAT ARE INTENDED TO DAMAGE,

DETRIMENTALLY INTERFERE WITH, SURREPTITIOUSLY INTERCEPT OR EXPROPRIATE ANY SYSTEM, DATA OR PERSONAL INFORMATION.

(d) WE DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE SERVICE OR RECEIVED THROUGH ANY LINKS PROVIDED BY THE SERVICE.

(e) WE MAKE NO REPRESENTATIONS THAT OUR SERVICES ARE APPROPRIATE OR AVAILABLE FOR USE IN ANY JURISDICTIONS. WHEN YOU ACCESS OR USE OUR SERVICES FROM A JURISDICTION, THEN YOU DO SO BY YOUR OWN VOLITION AND ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH LOCAL LAW.

6. LIMITATION OF DAMAGES; NO WARRANTIES

(a) IN NO EVENT SHALL WE BE RESPONSIBLE TO, OR LIABLE TO, YOU, OR ANY THIRD PARTY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) DAMAGES FOR ANY LOSS OF PROFIT, REVENUE OR BUSINESS, AS A DIRECT OR INDIRECT RESULT OF: (I) YOUR BREACH OR VIOLATION OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; (II) YOUR ACCESS AND USE OF OUR SERVICES; (III) YOUR DELAY IN ACCESSING OR INABILITY TO ACCESS OR USE OUR SERVICES FOR ANY REASON; (IV) YOUR DOWNLOADING OF ANY OF OUR CONTENT OR THE COLLECTIVE WORK FOR YOUR USE; OR (V) YOUR USE OF FACTORING SERVICES, WHETHER RESULTING IN WHOLE OR IN PART, FROM BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WE AND/OR OUR SUPPLIERS HAD BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. WITHOUT LIMITING THE FOREGOING, OUR LIABILITY AND THE LIABILITY OF OUR AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, INDEPENDENT CONTRACTORS, SHAREHOLDERS, REPRESENTATIVES, AND AGENTS ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED \$500.00

(b) YOU AND WE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO OUR SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

(c) CERTAIN STATE OR JURISDICTIONAL LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

7. Indemnification

- (a)** You agree to indemnify, defend, and hold harmless FactorFox, its affiliates, partners, members, owners, equity holders, officers, directors, and employees from and against any and all claims, damages, or liabilities related to (i) your breach of these Terms, (ii) your use of the Service, (iii) the conduct of third parties related to the Service (including any Third Party Factor) or (iv) your use of factoring services, whether with or without the Service. FactorFox may, but shall not be obligated to, direct any litigation subject to this indemnification obligation.

8. Law Enforcement

- (a)** FactorFox is committed to cooperating with law enforcement while respecting each individual's right to privacy. If FactorFox receives a request for user account information from a government agency investigating criminal activity, we will review the request to be certain that it satisfies all legal requirements before releasing information to the requesting agency.
- (b)** Furthermore, under 18 U.S.C. §§ 2702(b)(8) and 2702(c)(4) (Voluntary Disclosure Of Customer Communications or Records), FactorFox may disclose user account information to law enforcement, without a subpoena, court order, or search warrant, in response to a valid emergency when we believe that doing so is necessary to prevent death or serious physical harm to someone. FactorFox will not release more information than it prudently believes is necessary to prevent harm in an emergency situation.

9. Additional Terms

- (a)** These Terms shall be governed and construed in accordance with the laws of the state of Florida and the United States. Any dispute arising hereunder, or related to your use of the Services, will be brought exclusively in the state or federal courts located in Miami-Dade County, Florida.
- (b)** The Service or other users may provide links to unaffiliated third party websites or downloads. Under no circumstance shall FactorFox be responsible for the content of such third party links. You agree to hold FactorFox harmless for any damage or loss caused, directly or indirectly, by the use of, or reliance upon, any third party or affiliate content, information, statements, advertising, goods or services or other materials available on or through any such website or resource.
- (c)** These Terms, coupled with any applicable Privacy Policy, represents the full, final, and complete agreement between you and FactorFox regarding the use of the Service.
- (d)** If any provision of these Terms is held to be invalid or unenforceable, the remainder of these Terms shall continue in full force and effect to the maximum extent legally permissible.

(e) The delay or failure of the either party to exercise or enforce any right or provision of these Terms shall in no way constitute a waiver of such rights.