



END-USER SUBSCRIPTION AND LICENSE AGREEMENT

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO,” YOU AGREE TO THESE TERMS AND CONDITIONS.

This End-User Subscription and License Agreement (this “Agreement”) is a legally binding contract between Measure Square Corp (“Vendor”) and an individual end user of Vendor’s System, as defined below (“You”). Vendor provides the Measure Square 8 Desktop Windows Software, the iPad Onsite Measuring App, the FloorLink platform and the Measure Square Cloud (the “System”). You agree that when you access or use the System, You will do so subject to this Agreement. **DO NOT ACCESS OR USE THE SYSTEM IF YOU ARE UNWILLING OR UNABLE TO BE BOUND BY THIS AGREEMENT.**

This Agreement is effective as of the date You click “Accepted and Agreed To” (the “Effective Date”).

1. USE OF THE SYSTEM IN GENERAL.

- 1.1. System Subscription. During the Term (as defined in Section 9.1 below), You may access and use the System. You may reproduce and use Vendor's standard manual related to use of the System (the “Documentation”) solely as necessary to support use of the System.
- 1.2. System Revisions. Vendor may revise the features and functions of the System at any time.

2. THE MOBILE APP AND WINDOWS SOFTWARE.

- 2.1. License of the Mobile App. Vendor hereby grants You a nonexclusive license to use one copy of the App (as defined below) on your mobile device, solely as a component of the System, provided You comply with the restrictions set forth below in Section 2.3 (*Restrictions on the App and Software Rights*). The license in the preceding sentence does not include use by any third party, and You shall not permit any such use. (The “App” means Vendor’s downloadable iPad Onsite Measuring App. The App is a component of the System and is included in references thereto, except in this Article 2 and in any other provision that separately addresses the App.)
- 2.2. License of the Windows Software. Vendor hereby grants You a nonexclusive license to use one copy of the Software (as defined below) on your desktop, notebook or laptop computer, which can be on a network server, solely as a component of the System, provided You comply with the restrictions set forth below in Section 2.3 (*Restrictions on the App and Software Rights*). The license in the preceding sentence does not include use by any third party, and You shall not permit any such use. (The “Software” means Vendor’s downloadable Measure Square 8 Desktop Windows Software. The Software is a component of the System and is included in references thereto, except in this Article 2 and in any other provision that separately addresses the Software.)
- 2.3. Restrictions on the App and Software Rights. Copies of the App and Software created or transferred pursuant to this Agreement are licensed, not sold, and You receive no title to or ownership of any copy or of the Software and App itself. Furthermore, You receive no rights to the Software and App

other than those specifically granted in Section 2.1 and 2.2 above. Without limiting the generality of the foregoing, You shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the App and Software; (b) use the App or Software in any way forbidden by Section 4.1 below; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the App's or Software's source code.

- 2.4. Trial versions of the Measure Square System. A trial version is a license for the System for a term of 15 days to use the Software and App for the sole purpose of testing and evaluating the System. THE TRIAL VERION IS PROVIDED "AS IS". ACCESS TO AND USE OF ANY OUTPUT FILES CREATED WITH SUCH EVALUATION SOFTWARE AND APP IS ENTIRELY AT CUSTOMER'S OWN RISK.
- 2.5. Upgrades. "Upgrades" means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software and App and backup copies thereof. At Vendor's discretion, Vendor may provide You with Upgrades to the Software and App and retains the right to provide such Upgrades for a fee. In order to Install and use an Upgrade, You must have a license from Vendor to use the previous version. Upon Installation of the Upgrade, You may continue to use the previous version provided that the Upgrade and the previous version are installed on the same computers, subject to the limitations set forth in this agreement. Upon installation of the Upgrade, You shall not transfer the previous version to a third party. Unless Vendor provides other terms and conditions with an Upgrade, the terms and conditions of this Subscription and License Agreement shall continue to apply. You may refuse to accept an Upgrade. Upon release of an Upgrade, Vendor shall have no further obligation to support the previous version but may, in its sole discretion, provide limited support to the previous sequential release for a limited period of time.
- 2.6. System fees. You shall pay Vendor the fee set forth in each Order ("Order"), as set forth in <https://www.measuresquare.com/pricing.shtml>, for each Term. All billing cycles will start on the day of your order, and you will continue to be billed on this same day each month or year on an ongoing basis.
- 2.7. Subscription Modification. You can manage your existing subscriptions in the MeasureSquare Cloud portal. Once you have modified your subscriptions, the MeasureSquare Cloud will automatically update your billing and email You the confirmation of the changes (the email will go to the billing contact). Fees for additional services, such as additional subscriptions, will be billed at the time of the order. You will initially be charged a prorated amount for the additional services based on the number of days left until your regular billing date. Subsequently, you will be billed for all subscription charges on the normal billing date for your account. If you choose to remove your subscriptions or downgrade your services, such as switching from a Commercial license to a Retail license, after your card has been billed for the month, you will not receive a refund for the month. Your subscription will continue to be active through the final day of your current billing cycle, and you will continue to have access to the service through this date. Your modified services will take effect on the next billing cycle.
- 2.8. Subscription cancellation. If you choose to cancel the service after your card has been billed for the month or year, there will be no refund. Your subscription will continue to be active until the end of your current billing cycle. Your subscription will not renew following the end of your current billing cycle.
- 2.9. Subscription resumption. You can choose to resume your canceled subscription after the end of the billing cycle in which you canceled your service. Your new billing cycle will start on the day of your order, and you will continue to be billed on this same day each month or year on an ongoing basis.

3.YOUR CONTENT AND PRIVACY.

- 3.1. Permission from You. You grant Vendor permission to access, process and otherwise use Your Content (as defined below) in order to provide Vendor's products and/or services to You, to track and analyze Your use of the System, and make Your Content available to other users of the System and other third parties. To the extent that You have intellectual property rights in Your Content, You grant Vendor a world-wide, perpetual, non-exclusive, royalty-free, sublicensable, transferable license to use and prepare derivative works from Your Content for the purposes outlined in this Agreement. You agree that Your Content is not any person's or entity's confidential information, including Yours. ("Content" means text, images, photos, audio or video files, and other forms of data or communication. "Your Content" means Content submitted or transmitted by You.)
- 3.2. Rights in Your Content. You represent and warrant that You own Your Content or have received a valid license to Your Content and that submitting or transmitting Your Content to or through the System will not violate the rights of any third party, including intellectual property, privacy, or publicity rights. Vendor is under no obligation to review or screen Your Content or other System users' Content.
- 3.3. Privacy Policy. Vendor may manage any of Your Content containing personally identifiable information as set forth in Vendor's privacy policy, currently posted at <http://www.measuresquare.com/privacy.shtml> (the "Privacy Policy"). The Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System by Vendor or other System users.
- 3.4. Risk of Exposure. **YOU UNDERSTAND AND AGREE THAT SHARING CONTENT ONLINE INVOLVES RISKS OF UNAUTHORIZED DISCLOSURE OR EXPOSURE AND THAT, IN SUBMITTING YOUR CONTENT TO OR TRANSMITTING IT THROUGH THE SYSTEM, YOU ASSUME THESE RISKS.** Vendor offers no representation, warranty, or guarantee that Your Content will not be exposed or disclosed through the System or through errors or the actions of third parties.
- 3.5. Accuracy. Vendor has no responsibility or liability for the accuracy of any Content submitted to or transmitted through the System by You or another user, including without limitation Your Content.
- 3.6. Right to Retain, Delete or Suspend Access. You agree that You shall not rely on the System for backup or storage of Your Content. Vendor may retain Your Content even if You are no longer using the System but is not required to provide copies of Your Content to You. Vendor may permanently delete or erase Your Content or suspend Your access to Your Content through the System at any time and for any reason.
- 3.7. Aggregate & Anonymized Data. Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Your Content with personally identifiable information removed.)

4. YOUR RESPONSIBILITIES & RESTRICTIONS.

- 4.1. Acceptable Use. You agree to comply with the Vendor's acceptable use policy currently posted at <http://www.measuresquare.com/aup.shtml> (the "AUP"). In addition, you shall not: (a) provide System passwords or other log-in information to any third party; (b) share non-public System features or Content with any third party; or (c) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. If Vendor suspects that

You have violated the requirements of this Subsection 4.1, Vendor may suspend Your access to the System without advanced notice, in addition to other remedies Vendor may have. Vendor is not obligated to take any action against You or any other System user or other third party for violating this Agreement, but Vendor is free to take any such action it sees fit.

- 4.2. Unauthorized Access. You agree to take reasonable steps to prevent unauthorized access to the System, including by protecting Your passwords and other log-in information. You shall notify Vendor immediately if You know of or suspect unauthorized use of the System or breach of its security.
- 4.3. Compliance with Laws. In using the System, You shall comply with all applicable laws, including laws governing the protection of personally identifiable information and other laws applicable to the protection of Your Content.
- 4.4. System Access. You are responsible and liable for: (a) Your use of the System, including unauthorized conduct and conduct that would violate the AUP or the requirements of this Agreement; and (b) any use of the System through Your account or passwords, whether authorized or not.
- 4.5. Communications from Vendor. You consent to receive email and/or text messages from Vendor in connection with Your use of the System. Standard text messaging charges required by Your mobile carrier will apply to text messages we send You.

5. IP & FEEDBACK.

- 5.1. IP Rights in the System. Vendor retains all right, title, and interest in and to the System, including without limitation the App, Software and all other all software used to provide the System and all graphics, user interfaces, logos, trademarks reproduced through the System, as well as all Content other than Your Content. This Agreement does not grant You any intellectual property license or rights in or to the System or any of its components, except to the limited extent that this Agreement specifically sets forth Your license rights to the Software or App or the Documentation. You recognize that the System and its components are protected by copyright and other laws.
- 5.2. Feedback. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that You provide to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting You. You hereby grant Vendor a perpetual, irrevocable right and license to exploit Feedback in any and every way. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)

6. DISCLAIMERS.

- 6.1. Warranty Disclaimers. YOU AGREE THAT YOU ACCEPT THE SYSTEM "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO INDEMNIFY

OR DEFEND YOU AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT YOUR CONTENT WILL REMAIN PRIVATE OR SECURE; AND (d) VENDOR DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING PRODUCTS OR SERVICES PROVIDED BY OTHER USERS OF THE SYSTEM OR OTHER THIRD PARTIES.

- 6.2. Interactions with Other Users. You agree that You are solely responsible for your transactions or other interactions, either through the System or through other means of communication, with other users of the System. You acknowledge that that Vendor has no liability for any such interactions. Vendor may monitor or become involved in disputes between You and other users of the System but has no obligation to do so.
- 6.3. Third Party Sites and Content. You understand that the System may contain or send You links to third party websites, applications or features not owned or controlled by Vendor ("Third Party Sites"), and that links to Third Party Sites may also appear in Content available to You through the System. The System may also enable interactions between the System and a Third Party Site through applications that connect the System, or your profile on the System, with a Third Party Site. Through Third Party Sites you may be able to access Content from third parties that Vendor does not control and/or share Your Content with others. YOU ACCESS THIRD PARTY SITES ENTIRELY AT YOUR OWN RISK, AND VENDOR WILL HAVE NO LIABILITY FOR YOUR USE OF OR ACCESS TO THIRD PARTY SITES AND/OR THIRD PARTY CONTENT.)

7. INDEMNIFICATION. You agree to defend, indemnify, and hold harmless Vendor and the Vendor Associates (as defined below) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) infringement or violation of third party intellectual property, privacy or publicity rights by Content submitted to or transmitted through the System from Your account, including without limitation by Your Content; and (b) claims that use of the System through Your account harasses, defames, or defrauds a third party, infringes or misappropriates copyright, trade secret, or other intellectual property rights, or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Your obligations set forth in this Article 7 include retention and payment of attorneys and payment of court costs, as well as settlement at Your expense and payment of judgments. Vendor will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The "Vendor Associates" are Vendor's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

8. LIMITATION OF LIABILITY.

- 8.1. Dollar Cap. VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE ANNUAL AMOUNT ON THE SUBSCRIPTION TERM.
- 8.2. Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 8.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 8 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT

PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 8, Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Article 8 apply likewise to Vendor's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

9. Term & Termination.

- 9.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and continue until terminated by either You or Vendor.
- 9.2. Termination. Either party may terminate this Agreement for any reason at any time. You may terminate this Agreement by closing Your account. Vendor may terminate by notifying you in writing, which includes email, and closing Your account.
- 9.3. Effects of Termination. Upon termination of this Agreement, You shall cease all use of the System. The following provisions will survive termination of this Agreement: Articles 5 (*IP & Feedback*), 6 (*Disclaimers*), **Error! Reference source not found.** (*Indemnification*), 8 (*Limitation of Liability*), and 10 (*Miscellaneous*); and any other provision of this Agreement that must survive to fulfill its essential purpose.

10.MISCELLANEOUS.

- 10.1. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 10.2. Notices. Vendor may send notices to You by email at the email address [or mobile number] provided by You, and such notices will be deemed received 24 hours after they are sent. You may send notices pursuant to this Agreement to Vendor by email to info@measuresquare.com, and such notices will be deemed received 72 hours after they are sent.
- 10.3. Assignment & Successors. You may not assign this Agreement or any of Your rights or obligations under this Agreement without Vendor's express written consent. Except to the extent forbidden in this Section 10.3, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 10.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 10.5. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

- 10.6. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of California including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. To the extent that arbitration is not required under Subsection 10.10 below, the parties consent to the personal and exclusive jurisdiction of the federal and state courts of Pasadena, California. This Subsection 10.6 and Subsection 10.10 below govern all claims arising out of or related to this Agreement, including without limitation tort claims.
- 10.7. Conflicts. In the event of any conflict between this Agreement and any Vendor policy posted online, including without limitation the AUP or Privacy Policy, the terms of this Agreement will govern.
- 10.8. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 10.9. Amendment. Vendor may amend this Agreement from time to time by posting an amended version at its website and sending You written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless You first give Vendor written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions for 30 days following the Proposed Amendment Date (unless either You or Vendor first terminates this Agreement pursuant to Article 9, *Term & Termination*). Your continued use of the System following the effective date of an amendment will confirm Your consent to the Amendment. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 10.9, Vendor may revise the AUP and Privacy Policy at any time by posting a new version of either at Vendor's website, and such new version will become effective on the date it is posted.
- 10.10. Dispute Resolution. Any legal disputes or claims arising out of or related to this Agreement (including without limitation claims related to the use of the System, the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute), that cannot be resolved informally shall be submitted to binding arbitration in Pasadena, California. The arbitration will be conducted by the American Arbitration Association under its rules. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims must be brought within the statute of limitations or other time required by applicable law. You agree that You shall bring any claim, action or proceeding arising out of or related to the Agreement in your individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding. The arbitrator may not consolidate the claims of more than one person and may not otherwise preside over any form of a representative, collective, or class proceeding. YOU ACKNOWLEDGE AND AGREE THAT YOU AND VENDOR ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING IN ANY FORUM.