

End User License Agreement

Software License Agreement

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ARTICLE 1. THE SOFTWARE

1.01. Software Defined. The term Software as used in this agreement shall mean all computer programs licensed under this Agreement, including all related files, documentation, and other materials, whether in whole or in part, including any and all modifications, derivative works, and copies of the foregoing, regardless of the form or media in or on which they may exist. The Software shall consist of the products listed in the attached Software License Schedule, which is incorporated herein by reference.

ARTICLE 2. LICENSE GRANT AND LIMITATIONS

2.01. Grant of License. Licensor hereby grants, and Licensee hereby accepts, a nontransferable, non-exclusive and royalty-free license to use the Software, subject to the conditions and for the period specified in this Agreement.

2.02. Use of Software. Licensee agrees to use the Software for its sole and exclusive benefit.

2.03. Copies. Licensee shall not copy any portion of the Software.

2.04. Licensees Responsibilities. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software, including, but not limited to: (a) Assuring proper configuration of equipment or devices; (b) Establishing adequate operating methods; and; (c) Implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate action between it and its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Software.

2.05. License Period. The license granted in this Agreement shall remain in force during the subscription period unless terminated prior to that time as provided herein. Upon expiration of the term specified herein, Licensee shall have the option to renew the license for an additional minimum term or the license shall automatically renew for successive minimum terms unless

Licensee gives Licensor notice of its intention not to renew the license within 30 days prior to the expiration of a term.

2.06. Licensee's utilizing Mitchell RepairCenter. a) the Licensee must be a current Mitchell Customer under written contract with Mitchell as of the effective date of the FinalQC.com License Agreement; (b) the Agreement will automatically terminate in the event the Licensee either ceases to be under written contract for the Mitchell Products with Mitchell, or is delinquent in any payment obligation to Mitchell; and (c) Licensee grants Licensor the right to provide its Data to Mitchell in de-identified format and warrants that it has all rights necessary to provide such Data to Mitchell. Upon termination of Agreement, Licensor shall ensure that the Licensee ceases use of the Mitchell API as of the effective date of termination.

ARTICLE 3. PROPERTY RIGHTS

3.01. Ownership Rights to Software. (a) Licensee acknowledges and agrees that the Software is the confidential and proprietary property of Licensor, and except to the extent expressly authorized in this Agreement, Licensee receives no rights to and will not sell, assign, lease, market, transfer, encumber or otherwise suffer to exist any lien or security interest on, nor allow any third person, firm, company, or other entity to copy, reproduce or disclose the Software, whether in whole, in part, or in any manner whatsoever.(b) Licensor shall retain complete ownership of all modifications and derivative works provided to Licensee as part of any maintenance, support, or services. In no event shall any support, maintenance, services or Software provided to Licensee by Licensor pursuant to this Agreement be deemed to be based on any work made for hire agreement between the Parties.

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3.03. Security. Licensee agrees to keep the Software under access and use restrictions and not less strict than those applicable to Licensees own trade secrets.

3.04. Degree of Care. Licensee further agrees to instruct its personnel to keep the Software confidential by using the same care and discretion that they use with other data designated by Licensee as confidential.

3.05. Disclosure Constitutes Breach. Licensee agrees that any disclosure of the Software to a third party constitutes a material breach of this Agreement and shall terminate the license granted by this Agreement.

3.06. Damages for Breach. Licensee further agrees that it shall be strictly liable for all damages to Licensor that result from any disclosure of the Software to any third party.

3.07. Copyright or Other Marks. Licensee agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Software.

ARTICLE 4. PAYMENT

4.01. Periodic Payment. In payment for the license granted under this Agreement, Licensee shall pay Licensor the monthly sum of \$200.00 USD as a license fee. The initial license fee shall be payable upon signup. Succeeding monthly charges shall be payable from month to month in advance or Licensee shall be billed for succeeding monthly charges in advance and shall pay the amount billed within 15 days after the date billed.

4.02. Payment of Taxes. Licensee shall pay all taxes that may be assessed on the Software or its use, including personal property taxes, sales and use taxes, and excise taxes.

4.03. Renewal License Fee. On the exercise of an option to renew the license granted under this Agreement, Licensee shall pay Licensor a renewal license fee in the total sum of \$200.00 USD at the beginning of the new option period.

4.04. License Fee Increases. Licensor may increase the periodic license fee provided for hereunder on 30 day notice to Licensee. The increased license fee shall become effective on the date specified in the notice of the increase unless Licensee terminates this Agreement by 30 days notice to Licensor and returns the Software to Licensor on or before the date on which the increased fee would otherwise go into effect.

ARTICLE 5. DELIVERY, INSTALLATION, AND TRAINING

5.01. Delivery of Software. Licensor shall deliver the Software to Licensee online in the form of a Uniform Resource Locator (URL) and user login information once the signup process has been completed.

5.02. Services. Licensor shall assist in the installation and/or provision of the Software. Technical services shall be provided by Licensor in connection with the installation and/or provision of the Software. All support is provided by electronic means only (phone, text, email, web-based remote access) during the following software support business hours: between 8:00 am and 9:00 pm Eastern Standard Time (GMT-5:00), Monday through Friday, and between 8:00 am and 3:00 pm Eastern Standard Time (GMT -5:00) Saturday, excluding legal holidays in California and/or the United States. Licensee may access support by contacting support@finalqc.com or by phone at (844) 469-7247.

5.03. Testing. Licensee shall conduct tests of the Software on its installation and/or provisioning.

5.04. Acceptance. The Software shall be deemed to have been accepted by Licensee upon login.

5.05. Training. Licensee shall view the training materials located in the "Support" section of the software for self- training.

ARTICLE 6. WARRANTY, INDEMNIFICATION AND LIMITATION OF LIABILITY

6.01. Warranty. Licensor warrants to Licensee that the Software, in unmodified form and when used as authorized by this Agreement, will perform materially in accordance the Specifications for a period of days from the date initially delivered to Licensee (Warranty Period). If during the Warranty Period, Licensee demonstrates to Licensor that the Software does not perform materially in accordance with its Specifications (Defect), then Licensor, within days of receiving written notice of such a Defect, shall respond to Licensee with either (a) a statement that Licensor has in good faith and using reasonable efforts not yet been able to duplicate the alleged Defect, or (b) a plan indicating whereby Licensor intends, at its option and expense, to use commercially reasonable efforts to correct the Defect.

6.02. Warranty Disclaimer.

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- (3) Makes no compromise, settlement, or admission of liability; and

- (4) Provides reasonable assistance and cooperates in the defense of that action at Licensors expense. Subject to the limitations set forth in this Article 6, Licensor shall pay any resulting damages, costs and expenses finally awarded to a third party, including but not limited to reasonable legal fees. Licensor will have no responsibility for the settlement of any claim, suit, or proceeding made by Licensee without Licensors prior written approval.

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- (1) Procure for Licensee the right to continue using the infringing or potentially infringing Software;
- (2) Replace the infringing or potentially infringing Software with non-infringing Software; or
- (3) Modify the infringing or potentially infringing Software so that it become non-infringing. If none of the foregoing remedies are commercially feasible, then Licensor will return to Licensee any license fees paid for that Software, and upon such a return, any licenses granted to Licensee for that Software shall terminate immediately.

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- (2) Licensees use of any other than the latest release of the Software if Licensee is informed that a claim, suit or proceeding can be avoided by use of the latest software release;
- (3) Any use of the Software not authorized by this Agreement; or
- (4) A modification or derivative work made by Licensor based on Licensees instructions, designs or specifications.

(d) This Section 6.03 sets forth the entire obligation of Licensor, and Licensees exclusive remedy, for the actual or alleged infringement by any Software of any patent, copyright, trade secret or other intellectual property right of any person or entity.

6.04. Indemnification by Licensee.

(a) Licensee shall defend, indemnify, and hold Licensor harmless, under the same terms and conditions and to the same extent as Licensor's indemnification obligation pursuant to Section 6.03, from and against any and all claims asserted by a third party against Licensor to the extent such a claim is based or alleges the infringement of that third party's intellectual property rights by (1) modification(s) of the Software made by Licensee, or (2) derivative works made by Licensee.

(b) Licensee acknowledges that the Software is not designed, made, or intended for any use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft control, communications, or navigation, air traffic control, medical devices, nuclear applications, missile and defense systems that could lead directly to death, personal injury or severe physical or environmental damage (Unintended Uses). In the event any Licensee's Products incorporating any Software is used for any Unintended Uses, Licensee shall indemnify and hold Licensor and its suppliers, successors and assigns harmless from any claims, losses, costs, damages, expenses, or liability arising out of or in connection with any such Unintended Uses.

6.05. Limitation of Liability.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, EVEN IF THE PARTY TO BE CHARGED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL LICENSOR'S TOTAL LIABILITY UNDER ANY OR ALL PROVISIONS OF THIS AGREEMENT FOR ALL CAUSES OF ACTION ON A CUMULATIVE BASIS EXCEED THE PAYMENTS ACTUALLY MADE TO LICENSOR UNDER THIS AGREEMENT FOR ALL SOFTWARE OR SERVICES OR SUPPORT OR MAINTENANCE RESULTING IN LIABILITY OR OBLIGATIONS ON LICENSOR'S PART DURING THE IMMEDIATELY PRECEDING 3 MONTH PERIOD NOTWITHSTANDING THE FOREGOING WITH REGARD TO LICENSOR'S LIABILITY UNDER THIS SECTION, LICENSOR'S TOTAL LIABILITY SHALL NOT EXCEED THE GREATER OF SUCH PAYMENTS.

ARTICLE 7. TERMINATION

7.01. Grounds for Automatic Termination. The license granted by this Agreement shall be terminated automatically and without further notice upon the occurrence of any of the following:

- (a) Expiration of the term specified in this Agreement, or of any optional renewal term in the absence of a subsequent renewal in accordance with the terms of this Agreement.

- (b) Disclosure of the Software to a third party, whether directly by Licensee or indirectly and whether inadvertently or otherwise.
- (c) Refusal by Licensee to pay any periodic license fee or any increase in that fee provided for in this Agreement.
- (d) Cessation of business by Licensee or any successor or assign to whom the Software has been legitimately transferred.
- (e) Commission by Licensee of an event of default as defined herein.

7.02. Events of Default. Licensee shall have committed an event of default, and this Agreement and the license granted hereunder shall terminate, if any of the following occur:

- (a) Licensee attempts to use, copy, license, or convey the Software in any manner contrary to the terms of this Agreement or in derogation of Licensors proprietary rights in the Software.
- (b) Licensee fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including, without limitation, the timely payment of any sums due Licensors within 30 days after notice that the payment is delinquent.
- (c) Licensee makes an assignment of Licensees business for the benefit of creditors.
- (d) A petition in bankruptcy is filed by or against Licensee.
- (e) A receiver, trustee in bankruptcy, or similar officer is appointed to take charge of all or part of Licensees property.
- (f) Licensee is adjudicated a bankrupt.

7.03. Effect of Termination. Licensee agrees that immediately upon the operation of Section 7.01., whether or not it receives notice of termination, it shall immediately cease using the Software. Licensee further agrees that in the event of termination through its default, all fees or charges due for the remaining term of this Agreement and obligations under this Agreement shall cease.

ARTICLE 8. GENERAL TERMS AND CONDITIONS

8.01. Notices. Unless otherwise provided in this Agreement, any notice required or permitted by this Agreement to be given to either party shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, postage prepaid and addressed (when intended for Licensee) to Flashback Forward, Inc. Attention: Chief Executive Officer, 320 N. Anaheim Blvd, Anaheim California 92805.

8.02. Assignment of Contract. Licensee shall not assign or otherwise transfer its rights under this Agreement, including the license granted hereunder, or the Software obtained pursuant to this Agreement or this Agreement or its rights hereunder without the prior written consent of Licensor. Any attempt to make such an assignment without Licensor's consent shall be void.

8.03. Licensee understands and agrees that Licensor may change the terms of this Agreement and/or its Privacy Policy from time to time and will provide notice to Licensee of any such modifications ('Modifications') via the Software. By continuing to use the Software following notice of Modifications, Licensee agrees to be bound by any such Modifications. If Licensee does not agree to the Modifications, Licensee's only remedy is to cancel this Agreement and discontinue using the Software

8.04. Nonwaiver. Licensor and Licensee agree that no failure to exercise, and no delay in exercising any right, power, or privilege hereunder on the part of either party shall operate as a waiver of any right, power, or privilege. Licensor and Licensee further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

8.05. Attorneys Fees. If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.

8.06. Severability. If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to the part immediately involved in the controversy adjudged.

8.07. Governing Law. This Agreement shall be deemed to have been made in, and shall be construed pursuant to, the laws of the State of California.

8.08. Entire Agreement. Licensee acknowledges and agrees that this Agreement is the complete and exclusive statement of the mutual understanding of the parties, and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

Executed this 1st day of January, 2023 at 320 N Anaheim Blvd, Anaheim, California.

LICENSOR

Flashback Forward, Inc.

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