

Markforged Licensing and Cloud Service Terms for Public Sector End Users

Appendix 1: Software License Agreement

Appendix 2: Cloud Service Agreement

## APPENDIX 1

### SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“Agreement”) is between the Customer, as defined in the Agreement titled Confirmation of Markforged Licensing and Cloud Service Terms for Public Sector End Users, Purchase Order, Annex, Statement of Work, this Agreement, or similar document, and Markforged, Inc. with its principal place of business at 480 Pleasant Street, Watertown, Massachusetts 02472 (“Markforged”). This Agreement governs the Customer’s use of the Markforged software (the “Licensed Software”) and the Markforged documentation made available for use with such software.

WHEREAS, Markforged provides Licensed Software (as defined below) to users of Markforged 3D Printers (as defined below); and

WHEREAS, Customer has purchased one or more Markforged 3D Printers and wishes to use the Licensed Software.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, by signing this agreement, Customer agree as follows:

#### 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings for purposes of this Agreement.

“**3D Printer**” means a computer-aided manufacturing device that creates three-dimensional objects through a process in which such object is additively created by introducing or bonding additional material.

“**Authorized Users**” means Customer’s employees that Customer has authorized to use the Markforged Technology.

“**Customer**” means an organization that licenses software under this Agreement.

“**Customer Content**” means, collectively, (a) any files, designs, models, data sets, meshes, geometries, images, documents or similar material uploaded to the Markforged Technology by Customer; and (b) the specific tangible output generated from the Markforged Technology, if any, based on the foregoing, including, but not limited to, physical parts, articles, tools and prototypes. Customer Content expressly excludes all Markforged Technology.

“**Documentation**” means any guides or other documentation relevant to the Markforged Technology made available by Markforged.

“**Firmware**” means any pre-installed software embedded on any Markforged 3D Printer, including any updates thereto provided to Customer by Markforged.

“**Licensed Software**” means the proprietary software program(s) made available to Customer by Markforged or any of its authorized distributors or resellers to enable Authorized Users’ use of a Product.

“**Markforged 3D Printer**” means a 3D Printer manufactured by or on behalf of Markforged, including, but not limited to, the Metal X 3D print system, X3 print system, X5 print system, X7 print system, Onyx One, Onyx Pro and Mark Pro.

“**Markforged Technology**” means the Licensed Software, Products (including the Firmware) and Documentation.

“**Materials**” means printing materials made available by Markforged for use in Markforged 3D Printers including, but not limited to, any and all metal filaments or metal powders, plastics, composites and carbon fiber filament fabrication materials made available by Markforged.

“**Metrics**” means information about Customer’s access and use of the Markforged Technology, including, but not limited to, information regarding use of storage space and features of the Markforged Technology and any other statistical or analytical information or data derived from any of the foregoing.

“**Products**” means Markforged 3D Printers, Materials and any other products made available by Markforged.

“**Product Ts&Cs**” means the Markforged Product Terms and Conditions attached hereto and incorporated herein as Schedule 1.

“**Sites**” means [www.markforged.com](http://www.markforged.com) and/or [www.eiger.io](http://www.eiger.io).

“**You**” means Customer.

## 2. ACCESS AND USE OF THE MARKFORGED TECHNOLOGY

The Markforged Technology is intended to enable Customer to engage in additive manufacturing of three-dimensional objects for Customer’s internal business purposes through processes in which such objects are additively created by introducing or bonding Materials, in all cases, in accordance with this Agreement (including the Acceptable Use Policy set forth below) and the Documentation (the “**Intended Use**”).

## 3. CUSTOMER CONTENT

**3.1 Ownership of Customer Content.** Customer maintains sole and exclusive ownership of, and responsibility for, Customer Content. Customer acknowledges and agrees that (a) Customer will evaluate and bear all risks associated with Customer Content and (b) under no circumstances will Markforged be liable in any way for Customer Content, including, but not limited to any errors or omissions.

**3.2 Metrics.** Customer acknowledges and agrees that Markforged may remotely collect and analyze Metrics and can use the Metrics in any manner; provided, that, such Metrics will not identify Customer or any of its Authorized Users.

## 4. INTELLECTUAL PROPERTY RIGHTS

**4.1 Markforged Technology.** Markforged and its respective licensors or suppliers own all right, title, and interest in and to the Markforged Technology, and all intellectual property rights in or to any of the foregoing or that claim or cover any of the foregoing (the “**Markforged IP**”). Customer is not granted any licenses or rights of any kind to the Markforged IP, except as expressly set forth in this Agreement. Customer will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of Markforged in and to the Markforged IP. Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Markforged Technology as delivered to Customer.

**4.2 Access and Use of Firmware, Documentation and Licensed Software.** Subject to Customer’s compliance with this Agreement and the Documentation, Markforged grants Customer a nonexclusive, non-sublicensable, non-transferable license to (a) use the Firmware, solely as installed on Markforged 3D Printers, (b) install and use one (1) copy of the Licensed Software in object code form only as delivered pursuant to this Agreement and consistent with the use limitations set forth in this Agreement, including the Acceptable Use Policy, for Customer’s internal business purposes, solely in connection with Customer’s use of the Products, and (c) use the Documentation, solely in connection with Customer’s use of the Markforged Technology. Customer may permit the Licensed Software to be used by Authorized Users provided all such use is solely for Customer’s internal business purposes and Customer remains responsible and liable for all acts and omissions of such Authorized Users. Customer will not permit any third party to use the Licensed Software other than Authorized Users. Customer will immediately notify Markforged of any unauthorized use, or suspected unauthorized use, of the Licensed Software.

**4.3 Unblocking License.** It is possible that Customer may develop an invention through the use of the Markforged Technology that is or includes an improvement to the Markforged IP and that the related patent claims will be infringed by the manufacture, use, sale, offer for sale or importing of Markforged’s existing or future products or services. Both Customer and Markforged agree that it is not the intent for Customer to use the Markforged Technology and, as a result, restrict Markforged from running its business. Therefore, Customer hereby grants to Markforged and its customers a fully paid-up, royalty-free, worldwide, non-exclusive, irrevocable, sublicensable, transferable right and license under any patent rights issued to, obtained by, developed by or acquired by Customer that (a) are derived from and/or improve upon the Markforged IP; (b) are developed in connection with using the Markforged Technology and (c) are directed to 3D printing equipment or software, uses thereof or printing materials thereof. For the avoidance of doubt, Customer retains ownership of all such patent rights and only grant the foregoing license to Markforged and its customers to the extent each of the foregoing clauses (a)-(c) is satisfied.

**4.4 Feedback.** To the extent Customer provides any suggestions, comments or other feedback related to the Markforged Technology to Markforged or its authorized third party agent(s) (“**Feedback**”), Customer hereby grants to Markforged a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.

## 5. ACCEPTABLE USE POLICY

**5.1 Acceptable Use Policy.** Customer represents, warrants and covenants that Customer will comply with Markforged’s acceptable use policy, as set forth in clauses (a)-(d) below (the “**Acceptable Use Policy**”).

(a) Customer will not use the Markforged Technology to collect, upload, transmit, display, or distribute any of Customer Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, sexually explicit, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual, promotes illegal activities or contributes to the creation of weapons, illegal materials, or is otherwise objectionable; (iii) that is harmful to minors in any way; (iv) to engage in fraudulent activity (including impersonating another person or entity, or submitting misleading or false declarations concerning Customer's affiliation with a person or entity, or use proxy or anonymizing servers, or falsify headers or manipulate identifiers or addresses in any other way for the purpose of concealing the origin of any data sent via the Markforged Technology) or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data; or (v) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) Customer will not (i) modify, alter, tamper with, repair, translate, transmit, adapt, arrange, or create derivative works based on the Markforged Technology, except as expressly permitted herein; (ii) decompile, disassemble, disassociate, decrypt, extract, reverse compile or otherwise reverse engineer the Markforged Technology or any component thereof, or otherwise attempt to decipher the source code, algorithms, methods, structure, interfaces, protocols, messaging or techniques used or embodied in the Markforged Technology or any component thereof, except and only to the extent required by applicable law; (iii) distribute, rent, loan, lease, sell, resell, sublicense, convey, publicly display, publicly perform, exploit or otherwise make the Markforged Technology available for use by others in any time-sharing, service bureau or similar arrangement; (iv) remove, alter, or obscure any copyright, trademark, confidentiality or other proprietary notices, labels or marks from, on or pertaining to the Markforged Technology; or (v) use the Markforged Technology for any other benchmarking or competitive purposes or attempt to create similar products or services through use of the Markforged Technology.

(c) Customer will not use the Markforged Technology to: (i) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) utilize any equipment, device, software, or other means to (or designed to) circumvent or remove any form of technical protection used by Markforged in connection with the Markforged Technology; (iii) interfere with or disrupt the Markforged Technology or servers or networks used by Markforged to provide the Markforged Technology; (iv) use the Markforged Technology to perform any stress, vulnerability, penetration, availability, or performance testing on, or otherwise attempt to access in a manner not expressly permitted by Markforged, any network, system, server, or computer hosting the Markforged Technology; (v) interfere with, disrupt, or create an undue burden on servers or networks connected to the Markforged Technology or violate the regulations, policies, or procedures of such networks; (vi) attempt to gain unauthorized access to the Markforged Technology, other computer systems or networks connected to or used together with the Markforged Technology, through password mining or other means; or (vii) access or use the Markforged Technology.

(d) Customer will not use the Markforged Technology (i) in connection with any military operations or the operation of nuclear facilities, aircraft navigation, communication systems, medical devices, air traffic control devices, real time control systems or other situations in which the failure of the Markforged Technology could lead to death, personal injury, or physical property or environmental damage; (ii) to experiment with ordnance or collect, upload, transmit, display, print, extrude, deposit or distribute any of

Customer Content that contributes to the creation or modification of any firearm slide, lower, upper, upper receiver, lower receiver, barrel, bolt, or any other firearm or ordnance component, in whole or in part, that is capable of containing pressures in excess of 500 PSI; or (iii) in any manner or for any purpose other than for the Intended Use and as expressly permitted by this Agreement and any Documentation.

**5.2 Enforcement.** The Customer agrees to maintain reasonable records with respect to its installation and use of the Licensed Software, including, without limitation, records identifying the computer on which the Licensed Software is installed from time to time and identifying all individuals having access to the Licensed Software, and to retain all such records for a period of at least one (1) year following the end of the Term (the “**Usage Records**”). Markforged has the right (but not the obligation) to monitor and audit Customer’s (and the Authorized Users’) usage of the Markforged Technology, including Usage Records, to verify compliance with this Agreement, and to investigate and/or take appropriate action permitted by federal law against Customer in Markforged’s sole and absolute discretion if Customer demonstrates an intent to violate, violate or appear to violate the Acceptable Use Policy or any other provision of this Agreement. Further, such inspection shall be contingent upon adherence to Customer’s security requirements, including any requirement for personnel to be cleared prior to accessing sensitive facilities. Markforged shall give Customer notice of any requested audit. If Customer’s security requirements are not met, then upon Markforged’s request, Customer will run a self-assessment with tools provided by, and at the direction of Markforged to verify Customer’s compliance with the terms of this Agreement. Such action may include reporting Customer to law enforcement or regulatory authorities. Any use or access other than in accordance with this Agreement is unauthorized.

## 6. CONFIDENTIALITY

**6.1 Confidential Information.** “**Confidential Information**” means all confidential information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), whether disclosed orally or in writing, that is explicitly designated as “confidential”, “proprietary” or some similar designation, or is by its nature reasonably recognizable as potentially confidential and/or proprietary or is disclosed in a manner that it may be reasonably inferred to be confidential and/or proprietary to the Disclosing Party at the time of disclosure. Customer’s Confidential Information shall include Customer Content (subject to Section 3.2); Markforged’s Confidential Information shall include the Markforged Technology and related product plans and technical information. Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach on the part of the Receiving Party of any obligation owed to the Disclosing Party hereunder; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed by the Receiving Party to the Disclosing Party hereunder; (c) is received from a third party without breach by the Receiving Party of any obligation owed to the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without reliance on any Confidential Information disclosed by the Disclosing Party hereunder; or (e) constitutes Feedback.

**6.2 Confidentiality Obligations.** The Receiving Party shall use at least the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and agrees (a) not to use any Confidential Information of the Disclosing Party for any purpose except to exercise its rights or perform its obligations under this Agreement, and (b) to limit access to Confidential Information of the Disclosing Party to those of the Receiving Party’s and its affiliates’ employees, contractors and professional advisers (e.g. lawyers, accountants, etc.) who need such access for purposes consistent with this Agreement and who are subject to written nondisclosure and nonuse

obligations (or, in the case of professional advisers, ethical obligations) with the Receiving Party that are no less stringent than those set forth herein.

**6.3 Legal Related Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by applicable law including the Freedom of Information Act, court order, regulation, the rules of any relevant securities exchange or legal process to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted). If such disclosure is made at Customer's request, Markforged may invoice the Customer for the costs of compiling and providing access to such Confidential Information.

## 7. INDEMNIFICATION

### 7.1 Reserved.

**7.2 Indemnification by Markforged.** Markforged shall, at Markforged's sole expense and to the fullest extent permitted by law, indemnify, defend, and hold Customer and any of Customer's officers, directors, agents and employees, to the extent applicable (the "**User Indemnified Parties**") harmless against any and all Liabilities arising from any third party Claim arising out of an allegation that the Licensed Software or Firmware infringes or misappropriates any U.S. patent, copyright, trademark, trade secret or other intellectual property right of a third party, provided that Markforged shall have no obligation under this Section 7.2 for or with respect to claims to the extent arising as a result of (a) the combination, operation or use of the Markforged Technology with any items not supplied by Markforged, (b) modification of the Markforged Technology by any party other than Markforged or its authorized agents or contractors under the direction of Markforged, (c) use of the Markforged Technology in a manner that constitutes a breach of this Agreement (including the Product Ts&Cs) or the Documentation.

**7.3 Action in Response to Potential Infringement.** If the Markforged Technology becomes, or in Markforged's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, or if use of the Markforged Technology is permanently enjoined for any reason, Markforged, at its option and expense, may (a) replace or modify the applicable Markforged Technology so as to make it non-infringing so long as the modified Markforged Technology perform materially the same functions in a non-infringing manner; (b) procure the right for Customer to continue to use the applicable Markforged Technology as contemplated herein; (c) substitute an equivalent for the applicable Markforged Technology; or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement and Markforged will reimburse Customer within thirty (30) days for a pro rata portion of the purchase price paid by Customer for any affected Markforged 3D Printers and unused Materials based on straight-line depreciation over a thirty-six (36) month period following the delivery date of such 3D Printers and Materials. This Section 7 states Markforged's entire liability to Customer as to infringement and misappropriation claims and Customer sole remedy for any infringement or misappropriation claims concerning the Markforged Technology.

**7.4 Indemnification Procedure.** If a User Indemnified Party or a Customer Indemnified Party (each, an "**Indemnified Party**") becomes aware of any matter it believes it should be indemnified for under Section 7.1 or Section 7.2, as applicable, involving any Claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "**Action**"), the Indemnified Party will give the other party (the "**Indemnifying Party**") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel

in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

## 8. DISCLAIMERS; LIMITATION OF LIABILITY

**8.1 Disclaimers.** Markforged offers a limited warranty with respect to the Products, solely as set forth in the Product Ts&Cs. EXCEPT FOR THE LIMITED WARRANTY SET FORTH THEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MARKFORGED TECHNOLOGY IS PROVIDED ON AN “AS IS” BASIS AND NEITHER MARKFORGED NOR ITS SUPPLIERS MAKE ANY WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR TITLE, OR WARRANTIES OTHERWISE IMPLIED BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE). WITHOUT LIMITING THE FOREGOING, MARKFORGED DOES NOT WARRANT (A) THAT THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, TIMELY, ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR COMPLETE, WHETHER OR NOT UNDER SUBSCRIPTION OR SUPPORT BY MARKFORGED OR ANY THIRD PARTY OR (B) THAT THE MARKFORGED TECHNOLOGY WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS.

**8.2 Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) IN NO EVENT WILL EITHER PARTY OR ANY OF ITS SUPPLIERS BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF LIKE KIND WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MARKFORGED TECHNOLOGY (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER, OR ANY OTHER SIMILAR COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR WILL ANY OF THE FOREGOING PARTIES BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE EVENT OR ANY ACT OF A THIRD PARTY; AND (B) THE TOTAL CUMULATIVE COLLECTIVE LIABILITY OF EACH PARTY AND EACH OF ITS SUPPLIERS FOR ALL COSTS, LOSSES OR DAMAGES FROM ALL CLAIMS, ACTIONS OR SUITS HOWEVER CAUSED OR ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL NOT EXCEED (I) ALL AMOUNTS PAID OR DUE FROM CUSTOMER WITH RESPECT TO THE PARTICULAR MARKFORGED TECHNOLOGY GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM (NO MATTER WHEN PAYMENTS WERE ACTUALLY MADE), OR (II) ONE HUNDRED DOLLARS (\$100), WHICHEVER IS GREATER. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE FOREGOING LIMITATIONS IN THIS SECTION 8.2 WILL NOT APPLY TO ANY LIABILITY ARISING FROM (A) EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7,

(B) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 OR (C) CUSTOMER'S BREACH OF SECTIONS 4.2 OR 5.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY, EVEN IF MARKFORGED AND/OR ITS SUPPLIERS HAVE BEEN ADVISED, OR ARE OTHERWISE AWARE, OF THE POSSIBILITY OF DAMAGES IN EXCESS OF SUCH LIMITATIONS. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON LIABILITY, SO THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT MAY NOT APPLY. IN SUCH STATES, THE LIABILITY OF MARKFORGED AND ITS SUPPLIERS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31. U.S.C. §§ 3729-3733.

**8.3 Functionality Limitations.** The Markforged Technology consists of commercial professional tools intended to be used by trained professionals only. The Markforged Technology is intended only to assist Customer with Customer's design, analysis, simulation, estimation, testing and/or other activities and are not a substitute for Customer's own independent design, analysis, simulation, estimation, testing, and/or other activities, including those with respect to product stress, safety and utility. Due to the large variety of potential applications for the Markforged Technology, the Markforged Technology has not been tested in all situations under which it may be used. MARKFORGED WILL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE RESULTS OBTAINED THROUGH USE OF THE MARKFORGED TECHNOLOGY.

**8.4 Basis of the Bargain.** Customer agrees that releases, waivers, warranty disclaimers, limitations of liability and indemnities this Agreement are a fundamental basis of the bargain between Customer and Markforged, and are a material part of the consideration received by Markforged for entering into this Agreement with Customer and providing Customer with the Markforged Technology, and Markforged would not have entered into these Terms or provided Customer with the Markforged Technology in the absence of such releases, waivers, warranty disclaimers, limitations of liability and indemnities. Customer and Markforged agree that the disclaimers and limitations of liability set forth in this Section 8 are reasonable in light of the fees paid for the Markforged Technology.

## 9. SUPPORT AND MAINTENANCE

Except for any support or maintenance expressly outlined in the Product Ts&Cs or otherwise in a written agreement between Customer and Markforged, Markforged has no obligation to provide Customer with any support or maintenance in connection with the Markforged Technology. Further, this Agreement does not provide for the performance of any installation, training, customization or other services with respect to the Licensed Software.

## 10. TERM AND TERMINATION

**10.1 Term and Termination.** This Agreement commences on the Effective Date and continue until terminated as set forth herein (the "**Term**"). Customer may terminate this Agreement at any time, with or without cause, upon written notice to Markforged, provided that under no circumstances will Customer be

entitled to a refund for any fees paid or credit against fees due in connection with the Markforged Technology.

**10.2 Effect of Termination.** Upon any termination of this Agreement for any reason, Customer (and all of Customer's Authorized Users) must immediately cease using the Licensed Software and return to Markforged all copies, notes, memoranda and other tangible embodiments of Markforged's Confidential Information in its possession or under its control or destroy all such tangible embodiments and certify such destruction in writing to Markforged.

## 11. GENERAL

**11.1 Governing Law; Dispute Resolution.** This Agreement shall be governed by the federal laws of the United States. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement.

**11.2 Government Rights.** For U.S. Government procurements, Markforged Technology is deemed to be a "Commercial Item" as defined at 48 C.F.R. 2.101 and 48 C.F.R. Part 12.212. If acquired by or on behalf of a civilian agency, the U.S. Government agrees to acquire commercial computer software and/or commercial computer software documentation in the Markforged Technology subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government agrees commercial computer software and/or commercial computer software documentation in the Markforged Technology are subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Markforged Technology under this Agreement and in any subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed. Any use, modification, reproduction release, performance, display or disclosure of the Markforged Technology by the U.S. Government shall be solely in accordance with the commercial license rights and restrictions described herein.

**11.3 Export Control.** Customer acknowledges and agrees that Customer's use of the Markforged Technology may be subject to compliance with U.S. and other applicable country export control and trade sanctions laws, rules and regulations, including, without limitations the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury ("Export Control Laws"). Customer shall be solely responsible for complying with applicable Export Control Laws and monitoring any modifications to them. Customer represents and warrants that (a) Customer is not located within a nation or region that is subject to comprehensive U.S. trade sanctions or restrictions (currently including, without limitation, Crimea, Cuba, Iran, North Korea and Syria); (b) Customer is not identified on any U.S. government restricted party lists (including, without limitation, the U.S. Treasury Department's List of Specially Designated Nationals and Other Blocked Persons, the U.S. Department of Commerce's Denied Party List, Entity List and Unverified List and the U.S. Department of State's proliferation-related lists), or owned or controlled by any such person; (c) Customer will not, unless otherwise authorized under the Export Control Laws, use the Markforged Technology for any restricted end use, including, without

limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications; and (d) that no part of Customer Content is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control Laws. Customer agrees that Customer will not use the Markforged Technology to disclose, transfer, download, export or re-export, directly or indirectly, Customer Content, third party materials or any other content or material to any country, entity or other party which is ineligible to receive such items under the Export Control Laws or under other laws or regulations to which Customer may be subject.

**11.4 Relationship Between the Parties.** This Agreement will not be construed as creating any partnership, joint venture or agency relationship between Customer and Markforged. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or be intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

**11.5 Severability.** To the extent that any of these provisions are contrary to law, they should not be given full force and effect. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such affected provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity, illegality, or unenforceability), and shall be substituted (in respect of such jurisdiction) with a valid, legal, and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

**11.6 Headings and Language.** The section headings used in this Agreement are for convenience only and will not be given any substantive effect. When used in this Agreement, “includes” or “including” will be deemed to mean “including but not limited to” or “include but are not limited to.” The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations. The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including notices, have been and will be written in the English language only.

**11.7 Waiver.** A party may only waive its rights under this Agreement by a written document executed by an authorized representative of such party. No failure or delay to enforce any provision of, or exercise any right or remedy under, this Agreement shall constitute a waiver thereof or of any other provision hereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

**11.8 Assignment.** This Agreement may only be assigned with approval by the Contracting Officer in accordance with the novation process set forth at FAR 42.12.

**11.9 Notices.** Markforged may send Customer, in electronic form, information about the Markforged Technology, and information the law requires Markforged to provide to Customer and certain other additional information. Markforged may provide required information to Customer by email at the address Customer specified when Customer signed up for the Service or by access to a website that Markforged identifies.

**11.10 Force Majeure.** Neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including,

without limitation, acts of God, earthquake, fire, flood, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorism or terrorist acts, war, failure or interruption of the Internet or third party Internet connection(s) or infrastructure, power failures, acts of civil and military authorities and severe weather as more specifically set forth at FAR 52.212-4(f). Such party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

**11.11 Survival** All provisions of this Agreement which, by their nature, should survive the expiration or termination of Customer's relationship with Markforged shall survive such expiration or termination, including, without limitation, Sections 1, 3, 4.1, 4.3, 4.4, 6, 7, 8, 10 and 11.

**11.12 Entire Agreement.** This Agreement (including, without limitation, the Product Ts&Cs) contain the entire agreement between Customer and Markforged with respect to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Customer and Markforged with respect to the Markforged Technology. In the event of a conflict or inconsistency between this Agreement and the Product Ts&Cs, this Agreement will control.

**APPENDIX 2**  
**CLOUD SERVICES AGREEMENT**

This Cloud Services Agreement (“Agreement”) is between the Customer, as defined in the Confirmation principal place of business as set forth in a Purchase Order, Annex, Statement of Work, or similar document, and Markforged, Inc. with its principal place of business at 480 Pleasant Street, Watertown, Massachusetts 02472 (“Markforged”). This Agreement governs the Customer’s use of Markforged’s software (the “Licensed Software”) and Markforged’s documentation made available for use with such software. “

WHEREAS, Markforged provides Cloud Services (as defined below) to users of Markforged 3D Printers (as defined below); and

WHEREAS, Customer has purchased one or more Markforged 3D Printers and wishes to use the Cloud Services.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, Markforged and Customer agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings for purposes of this Agreement.

“**3D Printer**” means a computer-aided manufacturing device that creates three-dimensional objects through a process in which such object is additively created by introducing or bonding additional material.

“**Authorized Users**” means Customer’s employees that Customer has authorized to use the Markforged Technology.

“**Cloud Service**” means a software-as-a-service platform made available to Authorized Users via a Site for use in connection with such Authorized Users’ use of a Product.

“**Customer**” means an organization that licenses software under this Agreement.

“**Customer Content**” means, collectively, (a) any files, designs, models, data sets, meshes, geometries, images, documents or similar material uploaded to the Markforged Technology by Customer; and (b) the specific tangible output generated from the Markforged Technology, if any, based on the foregoing, including, but not limited to, physical parts, articles, tools and prototypes. Customer Content expressly excludes all Markforged Technology.

“**Documentation**” means any guides or other documentation relevant to the Markforged Technology made available by Markforged.

“**Firmware**” means any pre-installed software embedded on any Markforged 3D Printer, including any updates thereto provided to Customer by Markforged.

“**Markforged 3D Printer**” means a 3D Printer manufactured by or on behalf of Markforged, including, but not limited to, the Metal X 3D print system, X3 print system, X5 print system, X7 print system, Onyx One, Onyx Pro and Mark Pro.

“**Markforged Technology**” means the Cloud Service, Products (including the Firmware) and Documentation.

“**Materials**” means printing materials made available by Markforged for use in Markforged 3D Printers including, but not limited to, any and all metal filaments or metal powders, plastics, composites and carbon fiber filament fabrication materials made available by Markforged.

“**Metrics**” means information about Customer’s access and use of the Markforged Technology, including, but not limited to, information regarding use of storage space and features of the Markforged Technology and any other statistical or analytical information or data derived from any of the foregoing.

“**Products**” means Markforged 3D Printers, Materials and any other products made available by Markforged.

“**Product Ts&Cs**” means the Markforged Product Terms and Conditions attached hereto and incorporated herein as Schedule 1.

“**Sites**” means [www.markforged.com](http://www.markforged.com) and/or [www.eiger.io](http://www.eiger.io).

## 2. ACCESS AND USE OF THE MARKFORGED TECHNOLOGY

**2.1 Intended Use of the Markforged Technology.** The Markforged Technology is intended to enable Customer to engage in additive manufacturing of three-dimensional objects for Customer’s internal business purposes through processes in which such objects are additively created by introducing or bonding Materials, in all cases, in accordance with this Agreement (including the Acceptable Use Policy set forth below) and the Documentation (the “**Intended Use**”).

**2..2 Registration.** In order to operate Markforged 3D Printers, Customer will need to establish an account in the Cloud Service (an “**Account**”) via the Sites, unless otherwise authorized by Markforged. Customer represents and warrants that: (a) any information submitted as part of the Account registration process (the “**Registration Process**”) is true, accurate, current and complete and (b) Customer will maintain and promptly update the Registration Data to keep it true, accurate, current and complete. Customer accepts all responsibility for all activity that occurs under Customer’s user names and passwords (“**Login Credentials**”), including for all activity that occurs under Customer’s Authorized Users’ Accounts. Customer will keep Customer’s Login Credentials confidential and not authorize any third party to access or use the Markforged Technology on Customer’s behalf. Customer will immediately notify Markforged of any unauthorized use, or suspected unauthorized use of Customer’s Account or the Account of any Authorized User or any other breach of security. Markforged will not be liable for any loss or damage arising from Customer’s failure to comply with the above requirements.

### 3. CUSTOMER CONTENT

**3.1 Ownership of Customer Content.** Customer maintains sole and exclusive ownership of, and responsibility for, Customer Content. Customer acknowledges and agrees that (a) Customer will evaluate and bear all risks associated with Customer Content and (b) under no circumstances will Markforged be liable in any way for Customer Content, including, but not limited to any errors or omissions. Customer represents and warrants that (i) Customer has the requisite rights to submit, develop and use Customer Content in connection with Customer's use of the Markforged Technology and (ii) Customer Content does not infringe or misappropriate any intellectual property rights of any third party or violate any applicable laws, rules or regulations. Markforged shall have no responsibility or liability if any of Customer Content is deleted by Customer or Customer's Authorized Users or in accordance with Customer's settings or actions or inactions. Customer is solely responsible for backing up, to Customer's own computer or other device, Customer Content. Markforged does not guarantee or warrant that Customer Content will be free of damage, corruption or loss.

**3.2 License to Customer Content.** Customer hereby grants to Markforged a fully paid-up, royalty-free, worldwide, non-exclusive, non-sublicensable (except to Markforged's third-party contractors or service providers), non-transferable (except as set forth in Section 13.8) right and license (a) to copy, display, modify and otherwise use Customer Content only (i) in connection with ensuring the operation of the Products on Customer's behalf and (ii) internally in connection with improving the Markforged Technology, and (b) to create anonymized and aggregated data from Customer Content, provided such data cannot be sued to identify Customer or any Authorized Users ("**Aggregated Data**"). Customer acknowledges and agrees that Markforged can use the Aggregated Data and Metrics in any manner.

**3.3 Removal of Customer Content.** Subject to the Acceptable Use Policy set forth below and the other provisions in this Agreement, Customer acknowledges that Markforged is not responsible or liable in any way for Customer Content and has no duty to pre-screen Customer Content. However, Markforged reserves the right at all times to determine whether Customer Content is appropriate and in compliance with this Agreement, and may pre-screen, refuse and/or remove Customer Content at any time, without prior notice and in its sole discretion, if Customer Content is found to be in violation of this Agreement, including the Acceptable Use Policy.

**3.4 Restrictions.** Markforged reserves the right to restrict access to the Cloud Service from certain geographic locations. In addition, Markforged reserves the right to impose limits on the types of content Customer can store through the Cloud Service, such as unsupported file types. Additionally, Markforged reserves the right to set storage limits for the Cloud Service.

### 4. INTELLECTUAL PROPERTY RIGHTS

**4.1 Markforged Technology.** Markforged and its respective licensors or suppliers own all right, title, and interest in and to the Markforged Technology, and all intellectual property rights in or to any of the foregoing or that claim or cover any of the foregoing (the "**Markforged IP**"). Customer is not granted any licenses or rights of any kind to the Markforged IP, except as expressly set forth in this Agreement. Customer will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of Markforged in and to the Markforged IP. Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Markforged Technology as delivered to Customer.

**4.2 Access and Use of Firmware, Documentation and Cloud Service.** Subject to Customer's compliance with this Agreement and the Documentation, Markforged grants Customer a nonexclusive, non-sublicensable, non-transferable license to (a) use the Firmware, solely as installed on Markforged 3D Printers, and (b) use the Documentation, solely in connection with Customer's use of the Markforged Technology. Subject to Customer's compliance with this Agreement and the Documentation, Markforged also grants Customer the right to access and use the Cloud Service for Customer's internal business purposes, solely in connection with Customer's use of the Products. Customer may permit the Cloud Service to be accessed and used by Authorized Users provided all such access and use is solely for Customer's internal business purposes and Customer remains responsible and liable for all acts and omissions of such Authorized Users. Customer will not grant access to the Cloud Service to any third party other than Authorized Users.

**4.3 Unblocking License.** It is possible that Customer may develop an invention through the use of the Markforged Technology that is or includes an improvement to the Markforged IP and that the related patent claims will be infringed by the manufacture, use, sale, offer for sale or importing of Markforged's existing or future products or services. Both Customer and Markforged agree that it is not the intent for Customer to use the Markforged Technology and, as a result, restrict Markforged from running its business. Therefore, Customer hereby grants to Markforged and its customers a fully paid-up, royalty-free, worldwide, non-exclusive, irrevocable, sublicensable, transferable right and license under any patent rights issued to, obtained by, developed by or acquired by Customer that (a) are derived from and/or improve upon the Markforged IP; (b) are developed in connection with using the Markforged Technology and (c) are directed to 3D printing equipment or software, uses thereof or printing materials thereof. For the avoidance of doubt, Customer retains ownership of all such patent rights and only grant the foregoing license to Markforged and its customers to the extent each of the foregoing clauses (a)-(c) is satisfied.

**4.4 Feedback.** To the extent Customer provides any suggestions, comments or other feedback related to the Markforged Technology to Markforged or its authorized third party agent(s) ("**Feedback**"), Customer hereby grants to Markforged a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.

## 5. ACCEPTABLE USE POLICY

**5.1 Acceptable Use Policy.** Customer represents, warrants and covenants that Customer will comply with Markforged's acceptable use policy, as set forth in clauses (a)-(d) below (the "**Acceptable Use Policy**").

(a) Customer will not use the Markforged Technology to collect, upload, transmit, display, or distribute any of Customer Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, sexually explicit, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual, promotes illegal activities or contributes to the creation of weapons, illegal materials, or is otherwise objectionable; (iii) that is harmful to minors in any way; (iv) to engage in fraudulent activity (including impersonating another person or entity, or submitting misleading or false declarations concerning Customer's affiliation with a person or entity, or use proxy or anonymizing servers, or falsify headers or manipulate identifiers or addresses in any other way for the purpose of concealing the origin of

any data sent via the Markforged Technology) or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data; or (v) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) Customer will not (i) modify, alter, tamper with, repair, translate, transmit, adapt, arrange, or create derivative works based on the Markforged Technology, except as expressly permitted herein; (ii) decompile, disassemble, disassociate, decrypt, extract, reverse compile or otherwise reverse engineer the Markforged Technology or any component thereof, or otherwise attempt to decipher the source code, algorithms, methods, structure, interfaces, protocols, messaging or techniques used or embodied in the Markforged Technology or any component thereof, except and only to the extent required by applicable law; (iii) distribute, rent, loan, lease, sell, resell, sublicense, convey, publicly display, publicly perform, exploit or otherwise make the Markforged Technology available for use by others in any time-sharing, service bureau or similar arrangement; (iv) remove, alter, or obscure any copyright, trademark, confidentiality or other proprietary notices, labels or marks from, on or pertaining to the Markforged Technology; or (v) use the Markforged Technology for any other benchmarking or competitive purposes or attempt to create similar products or services through use of the Markforged Technology.

(c) Customer will not use the Markforged Technology to: (i) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) utilize any equipment, device, software, or other means to (or designed to) circumvent or remove any form of technical protection used by Markforged in connection with the Markforged Technology; (iii) interfere with or disrupt the Markforged Technology or servers or networks used by Markforged to provide the Markforged Technology; (iv) use the Markforged Technology to perform any stress, vulnerability, penetration, availability, or performance testing on, or otherwise attempt to access in a manner not expressly permitted by Markforged, any network, system, server, or computer hosting the Markforged Technology; (v) interfere with, disrupt, or create an undue burden on servers or networks connected to the Markforged Technology or violate the regulations, policies, or procedures of such networks; (vi) attempt to gain unauthorized access to the Markforged Technology, other computer systems or networks connected to or used together with the Markforged Technology, through password mining or other means; or (vii) access or use the Markforged Technology.

(d) Customer will not use the Markforged Technology (i) in connection with any military operations or the operation of nuclear facilities, aircraft navigation, communication systems, medical devices, air traffic control devices, real time control systems or other situations in which the failure of the Markforged Technology could lead to death, personal injury, or physical property or environmental damage; (ii) to experiment with ordnance or collect, upload, transmit, display, print, extrude, deposit or distribute any of Customer Content that contributes to the creation or modification of any firearm slide, lower, upper, upper receiver, lower receiver, barrel, bolt, or any other firearm or ordnance component, in whole or in part, that is capable of containing pressures in excess of 500 PSI; or (iii) in any manner or for any purpose other than for the Intended Use and as expressly permitted by this Agreement and any Documentation.

**5.2 Enforcement.** Markforged has the right (but not the obligation) to monitor and audit Customer's (and the Authorized Users') usage of the Markforged Technology to verify compliance with this Agreement, and to investigate and/or take appropriate action permitted by federal law against Customer in Markforged's sole and absolute discretion if Customer demonstrates an intent to violate, violate or appear to violate the Acceptable Use Policy or any other provision of this Agreement. Further, such monitoring under this section shall be contingent upon adherence to Customer's security requirements, including any requirement for

personnel to be cleared prior to accessing sensitive facilities. Markforged shall give Customer notice of any requested audit. If Customer's security requirements are not met, then upon Markforged's request, Customer will run a self-assessment with tools provided by, and at the direction of Markforged to verify Customer's compliance with the terms of this Agreement. Such action may include rCustomerCustomer reporting Customer to law enforcement or regulatory authorities. Any use or access other than in accordance with this Agreement is unauthorized.

## 6. CONFIDENTIALITY

**6.1 Confidential Information.** “**Confidential Information**” means all confidential information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), whether disclosed orally or in writing, that is explicitly designated as “confidential”, “proprietary” or some similar designation, or is by its nature reasonably recognizable as potentially confidential and/or proprietary or is disclosed in a manner that it may be reasonably inferred to be confidential and/or proprietary to the Disclosing Party at the time of disclosure. Customer's Confidential Information shall include Customer Content (subject to Section 3.2); Markforged's Confidential Information shall include the Markforged Technology and related product plans and technical information. Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach on the part of the Receiving Party of any obligation owed to the Disclosing Party hereunder; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed by the Receiving Party to the Disclosing Party hereunder; (c) is received from a third party without breach by the Receiving Party of any obligation owed to the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without reliance on any Confidential Information disclosed by the Disclosing Party hereunder; or (e) constitutes Feedback.

**6.2 Confidentiality Obligations.** The Receiving Party shall use at least the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and agrees (a) not to use any Confidential Information of the Disclosing Party for any purpose except to exercise its rights or perform its obligations under this Agreement, and (b) to limit access to Confidential Information of the Disclosing Party to those of the Receiving Party's and its affiliates' employees, contractors and professional advisers (e.g. lawyers, accountants, etc.) who need such access for purposes consistent with this Agreement and who are subject to written nondisclosure and nonuse obligations (or, in the case of professional advisers, ethical obligations) with the Receiving Party that are no less stringent than those set forth herein.

**6.3 Legal Related Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by applicable law including the Freedom of Information Act, court order, regulation, the rules of any relevant securities exchange or legal process to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted). If such disclosure is made at Customer's request, Markforged may invoice Customer for the costs of compiling and providing access to such Confidential Information.

## 7. INDEMNIFICATION

### 7.1 RESERVED.

**7.2 Indemnification by Markforged.** Markforged shall, at Markforged's sole expense and to the fullest extent permitted by law, indemnify, defend, and hold Customer and any of Customer's officers, directors, agents and employees, to the extent applicable (the "**User Indemnified Parties**") harmless against any and all Liabilities arising from any third party Claim arising out of an allegation that the Cloud Service or Firmware infringes or misappropriates any U.S. patent, copyright, trademark, trade secret or other intellectual property right of a third party, provided that Markforged shall have no obligation under this Section 7.2 for or with respect to claims to the extent arising as a result of (a) the combination, operation or use of the Markforged Technology with any items not supplied by Markforged, (b) modification of the Markforged Technology by any party other than Markforged or its authorized agents or contractors under the direction of Markforged, (c) use of the Markforged Technology in a manner that constitutes a breach of this Agreement (including the Product Ts&Cs) or the Documentation.

**7.3 Action in Response to Potential Infringement.** If the Markforged Technology becomes, or in Markforged's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, or if use of the Markforged Technology is permanently enjoined for any reason, Markforged, at its option and expense, may (a) replace or modify the applicable Markforged Technology so as to make it non-infringing so long as the modified Markforged Technology perform materially the same functions in a non-infringing manner; (b) procure the right for Customer to continue to use the applicable Markforged Technology as contemplated herein; (c) substitute an equivalent for the applicable Markforged Technology; or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement and Markforged will reimburse Customer within thirty (30) days for a pro rata portion of the purchase price paid by Customer for any affected Markforged 3D Printers and unused Materials based on straight-line depreciation over a thirty-six (36) month period following the delivery date of such 3D Printers and Materials. This Section 7 states Markforged's entire liability to Customer as to infringement and misappropriation claims and Customer sole remedy for any infringement or misappropriation claims concerning the Markforged Technology.

**7.4 Indemnification Procedure.** If a User Indemnified Party or a Customer Indemnified Party (each, an "**Indemnified Party**") becomes aware of any matter it believes it should be indemnified for under Section 7.1 or Section 7.2, as applicable, involving any Claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "**Action**"), the Indemnified Party will give the other party (the "**Indemnifying Party**") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

## 8. DISCLAIMERS; LIMITATION OF LIABILITY

**8.1 Disclaimers.** Markforged offers a limited warranty with respect to the Products, solely as set forth in the Product Ts&Cs. EXCEPT FOR THE LIMITED WARRANTY SET FORTH THEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MARKFORGED TECHNOLOGY IS PROVIDED ON AN "AS IS" BASIS AND NEITHER MARKFORGED NOR ITS SUPPLIERS MAKE ANY WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR

TITLE, OR WARRANTIES OTHERWISE IMPLIED BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE). WITHOUT LIMITING THE FOREGOING, MARKFORGED DOES NOT WARRANT (A) THAT THE CLOUD SERVICE WILL BE UNINTERRUPTED, TIMELY, ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR COMPLETE, WHETHER OR NOT UNDER SUBSCRIPTION OR SUPPORT BY MARKFORGED OR ANY THIRD PARTY OR (B) THAT THE MARKFORGED TECHNOLOGY WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

**8.2 Limitation of Liability.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) IN NO EVENT WILL EITHER PARTY OR ANY OF ITS SUPPLIERS BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF LIKE KIND WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MARKFORGED TECHNOLOGY (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER, OR ANY OTHER SIMILAR COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR WILL ANY OF THE FOREGOING PARTIES BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE EVENT OR ANY ACT OF A THIRD PARTY; AND (B) THE TOTAL CUMULATIVE COLLECTIVE LIABILITY OF EACH PARTY AND EACH OF ITS SUPPLIERS FOR ALL COSTS, LOSSES OR DAMAGES FROM ALL CLAIMS, ACTIONS OR SUITS HOWEVER CAUSED OR ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL NOT EXCEED (I) ALL AMOUNTS PAID OR DUE FROM CUSTOMER WITH RESPECT TO THE PARTICULAR MARKFORGED TECHNOLOGY GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM (NO MATTER WHEN PAYMENTS WERE ACTUALLY MADE), OR (II) ONE HUNDRED DOLLARS (\$100), WHICHEVER IS GREATER. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE FOREGOING LIMITATIONS IN THIS SECTION 8.2 WILL NOT APPLY TO ANY LIABILITY ARISING FROM (A) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, (B) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 OR (C) CUSTOMER'S BREACH OF SECTIONS 4.2 OR 5.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY, EVEN IF MARKFORGED AND/OR ITS SUPPLIERS HAVE BEEN ADVISED, OR ARE OTHERWISE AWARE, OF THE POSSIBILITY OF DAMAGES IN EXCESS OF SUCH LIMITATIONS. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON LIABILITY, SO THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT MAY NOT APPLY. IN SUCH STATES, THE LIABILITY OF MARKFORGED AND ITS SUPPLIERS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31. U.S.C. §§ 3729-3733.

**8.3 Functionality Limitations.** The Markforged Technology consists of commercial professional tools intended to be used by trained professionals only. The Markforged Technology is intended only to assist Customer with Customer's design, analysis, simulation, estimation, testing and/or other activities and are not a substitute for Customer's own independent design, analysis, simulation, estimation, testing, and/or other activities, including those with respect to product stress, safety and utility. Due to the large variety of potential applications for the Markforged Technology, the Markforged Technology has not been tested in all situations under which it may be used. MARKFORGED WILL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE RESULTS OBTAINED THROUGH USE OF THE MARKFORGED TECHNOLOGY.

**8.4 Basis of the Bargain.** Customer agrees that releases, waivers, warranty disclaimers, limitations of liability and indemnities this Agreement are a fundamental basis of the bargain between Customer and Markforged, and are a material part of the consideration received by Markforged for entering into this Agreement with Customer and providing Customer with the Markforged Technology, and Markforged would not have entered into these Terms or provided Customer with the Markforged Technology in the absence of such releases, waivers, warranty disclaimers, limitations of liability and indemnities. Customer and Markforged agree that the disclaimers and limitations of liability set forth in this Section 8 are reasonable in light of the fees paid for the Markforged Technology.

9. RESERVED.

10. RESERVED.

11. SUPPORT AND MAINTENANCE

Except for any support or maintenance expressly outlined in the Product Ts&Cs or otherwise in a written agreement between Customer and Markforged, Markforged has no obligation to provide Customer with any support or maintenance in connection with the Markforged Technology.

12. TERM AND TERMINATION

**12.1 Term and Termination.** This Agreement commences on the Effective Date and continue until terminated as set forth herein (the "**Term**"). Markforged may terminate this Agreement upon written notice to Customer if Customer breaches any of the terms and conditions set forth in this Agreement. In addition, Markforged may, as an alternative to termination, suspend Customer's access to the Cloud Service if Customer fails to make a payment to Markforged or one of its authorized distributors or resellers or otherwise fail to comply with the provisions of this Agreement. Markforged may also terminate this Agreement upon written notice to Customer if (a) Customer becomes subject to bankruptcy proceedings, become insolvent, or make an arrangement with Customer's creditors or (b) the continued provision of the Cloud Service to Customer becomes prohibited by applicable law, rule or regulation. This Agreement will terminate automatically without further notice or action by Markforged if Customer goes into liquidation. Customer may terminate this Agreement at any time, with or without cause, upon written notice to

Markforged, provided that under no circumstances will Customer be entitled to a refund for any fees paid or credit against fees due in connection with the Markforged Technology.

**12.2 Effect of Termination.** Upon any termination of this Agreement for any reason, Customer (and all of Customer's Authorized Users) must immediately cease using the Cloud Service. It is Customer's responsibility to retain copies of Customer Content. Within thirty (30) days following the end of the Term ("**Content Retrieval Period**"), Customer may request retrieval of Customer Content currently uploaded and stored in the Cloud Service. Provided Customer has paid all amounts due in connection with Customer's use of the Markforged Technology and are not otherwise in breach of this Agreement, Markforged will, at Markforged's election, either (a) grant Customer limited access to the Cloud Service for the sole purpose of allowing Customer to retrieve Customer Content or (b) deliver Customer Content to Customer in a mutually agreed upon format. Each of (a) and (b) will be made available to Customer at Markforged's then-current daily professional services rates. Upon termination Markforged shall have the right to immediately deactivate Customer's Account (and any Authorized User Accounts thereunder) and suspend access to Customer Content and, following the Content Retrieval Period, Markforged may delete, without notice, Customer Content and all backups thereof.

## 13. GENERAL

**13.1 Governing Law; Dispute Resolution.** This Agreement shall be governed by the federal laws of the United States. Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement.

**13.2 Government Rights.** For U.S. Government procurements, Markforged Technology is deemed to be a "Commercial Item" as defined at 48 C.F.R. 2.101 and 48 C.F.R. Part 12.212. If acquired by or on behalf of a civilian agency, the U.S. Government agrees to acquire commercial computer software and/or commercial computer software documentation in the Markforged Technology subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("**FAR**") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("**DOD**"), the U.S. Government agrees commercial computer software and/or commercial computer software documentation in the Markforged Technology are subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("**DFARS**") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Markforged Technology under this Agreement and in any subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed. Any use, modification, reproduction release, performance, display or disclosure of the Markforged Technology by the U.S. Government shall be solely in accordance with the commercial license rights and restrictions described herein.

**13.3 Export Control.** Customer acknowledges and agrees that Customer's use of the Markforged Technology may be subject to compliance with U.S. and other applicable country export control and trade sanctions laws, rules and regulations, including, without limitations the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury ("**Export Control Laws**"). Customer

shall be solely responsible for complying with applicable Export Control Laws and monitoring any modifications to them. Customer represents and warrants that (a) Customer is not located within a nation or region that is subject to comprehensive U.S. trade sanctions or restrictions (currently including, without limitation, Crimea, Cuba, Iran, North Korea and Syria); (b) Customer is not identified on any U.S. government restricted party lists (including, without limitation, the U.S. Treasury Department's List of Specially Designated Nationals and Other Blocked Persons, the U.S. Department of Commerce's Denied Party List, Entity List and Unverified List and the U.S. Department of State's proliferation-related lists), or owned or controlled by any such person; (c) Customer will not, unless otherwise authorized under the Export Control Laws, use the Markforged Technology for any restricted end use, including, without limitation, design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems or unmanned air vehicles applications; and (d) that no part of Customer Content is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control Laws. Customer agrees that Customer will not use the Markforged Technology to disclose, transfer, download, export or re-export, directly or indirectly, Customer Content, third party materials or any other content or material to any country, entity or other party which is ineligible to receive such items under the Export Control Laws or under other laws or regulations to which Customer may be subject.

**13.4 Relationship Between the Parties.** This Agreement will not be construed as creating any partnership, joint venture or agency relationship between Customer and Markforged. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

**13.5 Severability.** To the extent that any of these provisions are contrary to law, they should not be given full force and effect. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such affected provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity, illegality, or unenforceability), and shall be substituted (in respect of such jurisdiction) with a valid, legal, and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

**13.6 Headings and Language.** The section headings used in this Agreement are for convenience only and will not be given any substantive effect. When used in this Agreement, "includes" or "including" will be deemed to mean "including but not limited to" or "include but are not limited to." The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations. The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including notices, have been and will be written in the English language only.

**13.7 Waiver.** A party may only waive its rights under this Agreement by a written document executed by an authorized representative of such party. No failure or delay to enforce any provision of, or exercise any right or remedy under, this Agreement shall constitute a waiver thereof or of any other provision hereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

**13.8 Assignment.** This Agreement may only be assigned with approval by the Contracting Officer in accordance with the novation process set forth at FAR 42.12.

**13.9 Notices.** Markforged may send Customer, in electronic form, information about the Markforged Technology, and information the law requires Markforged to provide to Customer and certain other additional information. Markforged may provide required information to Customer by email at the address Customer specified when Customer signed up for the Service or by access to a website that Markforged identifies.

**13.10 Force Majeure.** Neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorism or terrorist acts, war, failure or interruption of the Internet or third party Internet connection(s) or infrastructure, power failures, acts of civil and military authorities and severe weather as more specifically set forth at FAR 52.212-4(f).. Such party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

**13.11 Survival** All provisions of this Agreement which, by their nature, should survive the expiration or termination of Customer's relationship with Markforged shall survive such expiration or termination, including, without limitation, Sections 1, 3, 4.1, 4.3, 4.4, 6, 7, 8, 12 and 13.

**13.12 Entire Agreement.** This Agreement (including, without limitation, the Product Ts&Cs) contain the entire agreement between Customer and Markforged with respect to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Customer and Markforged with respect to the Markforged Technology. In the event of a conflict or inconsistency between this Agreement and the Product Ts&Cs, this Agreement will control.

# SCHEDULE 1

## Terms & Conditions

### OVERVIEW

These Terms of Service apply to your purchase and/or use of our products and services and sets forth the policies and procedures with respect to the purchase of products and/or services from Markfoged, Inc. (“Markfoged,” “we,” “us” or “our”). For our purposes of these Terms of Service “you” and “your” refer to you, the person or entity using the products, services, or Website(s) and/or purchasing any product or service from Markfoged (or our an authorized Markfoged supplier, as applicable).

**Please read these Terms of Service carefully before purchasing products or services from us or using our products or services. By purchasing products or services from us** (or our an authorized Markfoged supplier, as applicable), **you agree to be bound by these Terms of Service as well as those additional terms and conditions and policies referenced herein and/or available by hyperlink, including without limitation our Privacy Policy at [www.markfoged.com/privacy](http://www.markfoged.com/privacy) (collectively referred to herein as “Terms of Service”).** If you do not agree to all the terms and conditions of these Terms of Service, then you may not purchase any products or services, use the products or services, or access our Websites. If these Terms of Service are considered an offer, our acceptance is expressly limited to your agreement to these Terms of Service. If you are purchasing or using products or services on behalf of an entity, you represent and warrant that you have the authority to bind the entity on whose behalf you are purchasing or using the products or services to these Terms of Service and such entity will be subject to all terms and conditions of these Terms of Service. **These Terms of Service are subject to the Software License Agreement. To the extent that any of these terms are contrary to law, they should not be given full force and effect.**

**Changes.** We may update these Terms of Service from time-to-time by posting a new version on our Websites. You should check this page occasionally to review any changes. We will provide notice of any changes by posting the revised Terms of Service on our Websites. We encourage you to periodically review these Terms of

Service to be informed with respect to any changes to these Terms of Service. Purchasing products from us (or our an authorized Markfoged supplier, as applicable) or continuing to use our services after a notice of changes has been sent to you or published on our Websites shall constitute consent to the changed terms and practices. Unless stated otherwise, our current Terms of Service also applies to all purchases of products and services from our online store.

**Children.** Children are not eligible to use our Websites and we ask that minors (under the age of 18) do not use our Websites and our Websites are not directed to children under 18 years of age. By agreeing to these Terms of Service, you represent that you are at least the age of majority in your state or province of residence, or that you are the age of majority in your state or province of residence and you have given us your consent to allow any of your minor dependents to purchase products and services from us (or our an authorized Markfoged supplier, as applicable).

## PURCHASE AND LICENSE OF PRODUCTS AND SERVICES

Product and Service Descriptions. “Materials” means printing filament materials (including, but not limited to, any polymer materials or Composite Filament Fabrication materials combining a reinforcing fiber with a matrix). “Products” means Markfoged systems and/or 3D printers, and/or materials, and/or Markfoged provided content, and/or executable software code made available to You hereunder. “Services” includes the products, any guides or other documentation provided or made available by Markfoged, and any software, script, client or server services or content provided by Markfoged hereunder or accessed or generated in connection with the products. All descriptions of our products and services are subject to change at any time, with or without notice, in our sole discretion. Further, we reserve the right to modify or discontinue any of our products or services at any time, with or without notice in our sole discretion. The information provided online with respect to products and services may be out of date, and we make no commitment to update the information provided online with respect to products and services. If the product or service you purchase includes or consists of software, the software is licensed and not sold and will be governed by the end user license agreement which accompanies the

software. You agree to be bound by all terms and conditions of the Software and/or Cloud Licensing Agreement when accessing and/or using the software.

**Shipping and Delivery.** For orders of products, we will ship your order upon product availability. We cannot guarantee that we will have the quantities of the products you order immediately available and product availability may be delayed, including without limitation due to the popularity of our products or supply constraints. We reserve the right to change quantities available for purchase at any time, even after you place and we accept an order. Further, there may be occasions where we confirm your order but subsequently learn that we cannot supply the ordered product, in which case, we will cancel your order and refund the price you paid in full. Since the actual delivery of your order may be impacted by events beyond our control once it leaves our facilities, we cannot be held liable for late deliveries.

**Prices.** Reserved.

**Payment.** Reserved.

**Export; Compliance with Law.** Our products are subject U.S. and foreign export control laws and regulations and must be purchased, sold, exported, re-exported, transferred and used in compliance with such export laws and regulations. Any offer for any product or service made on our Websites is void where prohibited by law. You may not use or otherwise export or re-export the products except in accordance with applicable export laws. In particular, but not in limitation, you may not export or re-export the products into any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. You represent that you are not located in any country or on any list where the provision of any product or service to you would violate applicable law. You also agree that you will not use the products or services for any purposes prohibited by applicable law.

**Restrictions on Use.** You agree that you will not directly or indirectly, or encourage, assist, permit or direct any third party to: (i) modify, alter, tamper with, repair, translate, adapt, arrange, or create derivative works based on the products or services or any component thereof, except as permitted herein or in an end user license agreement

accompanying the products or services; (ii) decompile, disassemble or otherwise reverse engineer the products, services, or any component thereof, or determine or attempt to modify, translate, determine, discover, or recreate any designs, source code, algorithms, methods, structure, interfaces, protocols, messaging or techniques used or embodied in the services or products or any component thereof, except and only to the extent that the applicable law expressly permits doing so; (iii) distribute, rent, loan, lease, sell, resell, sublicense, or otherwise transfer all or any portion of the services, your rights with respect to the services or any part of these Terms, to any other person or legal entity; (iv) remove, alter, or obscure any copyright, trademark, confidentiality or other proprietary notices, labels, or marks from, on or pertaining to the products or services; (v) use the products or services to collect, upload, transmit, display, print, extrude, deposit or distribute any content that is in violation of any law, regulation, or obligations or restrictions imposed by any third party; (vi) make or permit use of any trademark, trade name, service mark or other commercial symbol of Markforged without its prior written consent; and/or (vii) take or permit any other action which could impair Markforged's rights, or damage the image or reputation of quality inherent in the products or services, Markforged's business, reputation, Intellectual Property or other valuable assets or rights. In the event You rent, lease, sell or otherwise transfer the products to a third party, You agree that you will require such third party to be bound by at least Sections herein entitled "Product and Service Descriptions", "Restrictions on Use", and "Intellectual Property" hereof as a condition of such rental, lease, sale or other transfer.

## RETURN POLICY

You may return to us any item that you purchased from us in accordance with the following terms and conditions:

**30 Days** — You can return items to us within 30 days of the date they were shipped to you. After 30 days, we do not accept returns.

**Return to Manufacturer Authorization (RMA)** — Before returning an item, contact us at [support@markforged.com](mailto:support@markforged.com) to explain the reason for the return, the details of your original order, and whether you want a refund or an exchange. As appropriate, we will issue you an RMA number, which you need to include

in the package for the returned item, along with a copy of the original order information. We do not accept returned items for which an RMA has not been issued.

**Condition** — The item being returned must be unused, undamaged, complete with all parts and accessories, in the same condition you received it, and in its original packaging. Returns of consumables will not be accepted if packaging is opened.

**Shipping** — You must pack the item to prevent damage in transit and insure the package for its value, as you will be responsible for damage or loss in transit. We recommend you use a shipping service that allows you to track the package. You are responsible for paying all shipping and insurance costs for the return shipment. If you are seeking an exchange, you will also be responsible for all costs of shipping the new item to you and for any difference in price plus any taxes, duties, tariffs or similar charges.

**International Returns** — Presently, all of our facilities are located in the USA. We are not responsible for international return shipping costs and any incidental fees or tariffs. You should make yourself familiar with your region's customs policies and shipping providers.

**Upon Receipt** — Once your return is received and inspected, we will send you an email to notify you that we have received your returned item and whether your request for refund or exchange has been approved. We may charge a fee for missing or used accessories.

**Restocking Fee** — For non-defective items, we charge a restocking fee equal to 10% of the original purchase price of each item returned. This fee will be deducted from your refund, or if you have requested an exchange, you will need to pay the fee to us before we will ship the replacement item.

**Refund** — If a refund is approved, a credit will automatically be applied to your credit card or original method of payment. This refund amount may take some time to show in your records, so before contacting us, please check with your credit card company, bank, or other payment service.

**Exchange** — If an exchange is approved, we will ship the new item to you, after your payment of any applicable restocking and shipping fees and any difference in price plus any taxes, duties, tariffs or similar charges.

## EXCLUSIVE LIMITED WARRANTY; EXCLUSIONS; DISCLAIMER

**Applicability.** Please access and review the online help resources referred to in the documentation accompanying the affected hardware product before requesting warranty service. If the product is still not functioning properly after making use of these resources, please contact us at [support@markforged.com](mailto:support@markforged.com). You must assist us in diagnosing issues with your product and follow our warranty processes and procedures.

We may restrict service to the fifty states of the United States of America and the District of Columbia, and provide warranty service (i) by sending you prepaid way bills (and if you no longer have the original packaging, we may send you packaging material) to enable you to ship the product to our repair service location for service, or (ii) by sending you new or refurbished customer-installable replacement product or parts to enable you to service or exchange your own product (“DIY Service”).

**Exclusive Limited Warranty.** We warrant Markforged-branded hardware products against defects in materials and workmanship under normal use in accordance with the products’ documentation for the time periods set forth below and as set forth below (each, a “Warranty Period”). If a hardware defect arises and a valid claim is received within the Warranty Period, at our sole option and to the extent permitted by law we will do the following:

**Labor:** For a period of ninety days from the date of shipment to the original purchaser (“Labor Warranty”), we will, at our option, either (1) repair the hardware defect at no charge, using new or refurbished replacement parts, (2) provide you with new or refurbished user-installable replacement parts to enable you to repair the hardware defect as DIY Service, (3) exchange the product with a product that is new or reconditioned by us or that has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product, or (4) refund the purchase price of the product. If we elect to repair or replace the product after this

Labor Warranty has expired but while the Parts Warranty below is still in effect, we will do so for the applicable labor charge.

**Parts:** For a period of one year from the date of shipment to the original purchaser (“Parts Warranty”), we will supply you with new or refurbished parts replacement parts in exchange for parts determined to be defective.

A replacement product or part, including a user-installable part that has been installed in accordance with instructions provided by us, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair (or, in the case of user-installable replacement parts, the date on which we shipped the user-installable replacement parts), whichever provides longer coverage for you. Parts provided by us in fulfillment of our warranty obligation must be used in products for which warranty service is claimed.

When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes our property, and you agree to follow our instructions, including, if required, arranging the return of original product or part to us in a timely manner. When a refund is given, the product for which the refund is provided must first be returned to us before we will issue the refund and the product becomes our property on our receipt of the product. In the event of DIY Service requiring the return of the original product or part, we may require a credit card authorization as security for the retail price of the replacement product or part and applicable shipping costs. If you follow instructions, we will cancel the credit card authorization, so you will not be charged for the product or part and shipping costs. If you fail to return the replaced product or part as instructed, we will charge the credit card for the authorized amount.

Service options, parts availability, and response times may vary. Service options are subject to change at any time. In accordance with applicable law, we may require that you furnish proof of purchase details and/or comply with registration requirements before receiving warranty service.

You acknowledge and agree that THE CONTENTS OF YOUR PRODUCT WILL BE DELETED AND THE STORAGE MEDIA REFORMATTED IN THE COURSE OF WARRANTY SERVICE. Your product will be returned to you configured as originally purchased, subject to applicable updates.

You are responsible for all shipping costs associated with returning a defective product or part to us; provided, however, that if we determine that the product or part is eligible for warranty coverage, we will pay the shipping costs associated with shipping the repaired or replacement product or part to you. If we determine the product or part is not eligible for the warranty, we will return the product or part to you at your sole cost and expense and may require you to pay such costs prior to shipping the product or part.

**The foregoing limited warranty is an express, exclusive limited warranty and your sole remedy for any defect in the Markforged hardware. For the avoidance of doubt, any software provided by Markforged or included in a Markforged product and any third party product is provided “as is” and without any warranty.**

No Markforged reseller, distributor, agent, or employee is authorized to make any modification, extension, or addition to the exclusive limited warranty set forth herein.

**Exclusions. The foregoing limited warranty applies only to hardware products manufactured by or for Markforged that can be identified by the “Markforged” trademark, trade name, or logo affixed to them and which are used only with Markforged proprietary materials, and does not apply to any third party hardware products or to any third party or Markforged software products, even if packaged or sold with the Markforged hardware, all of which are provided “as is” and without warranty. For the avoidance of doubt, if you use the product with materials that were not provided by Markforged, Markforged has no obligation to you under the foregoing limited warranty. Further, the foregoing limited warranty does not apply: (a) to damage caused by use with materials, products or software not developed by Markforged; (b) to damage caused by accident, abuse, misuse, flood, fire, earthquake, or other external causes or by failure to follow instructions relating to the product’s use; (c) to damage caused by operating the product outside the permitted or intended uses described in the product’s documentation; (d) to damage caused by service (including upgrades and expansions) performed by anyone who is not an authorized representative of Markforged; (e) to a product or part that has been modified to alter functionality or capability without our prior written permission; (f) to consumable parts, unless damage has occurred due**

**to a defect in materials or workmanship; (g) to cosmetic damage, including but not limited to scratches, dents; or (h) if any Markforged serial number has been removed or defaced.**

## THIRD-PARTY TOOLS AND WEBSITES

We may provide you with access to third-party tools which we neither monitor nor have any control over. You acknowledge and agree that we provide access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of optional third-party tools. Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

Third-party links on our Websites may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties.

We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

## INTELLECTUAL PROPERTY

Our products and services are protected by United States and international intellectual property rights protections, including without limitation trade secret, patent and copyright. All rights not expressly granted herein are reserved. You acknowledge and agree that Markforged and its current licensors own all right, title, and interest in all intellectual property that relates to the products or services and the use thereof. Unless we have granted you licenses to our intellectual property in these Terms and/or applicable terms of an accepted software

end user license agreement, our providing you with the products or services does not give you any license to our intellectual property. All rights not expressly granted herein are reserved.

You may from time to time, make known to us suggestions, enhancement requests, techniques, know-how, comments, feedback or other input with respect to our products and services (collectively, "Feedback") and you hereby grant to us a royalty-free, worldwide, irrevocable, fully paid up, perpetual license to use, disclose, distribute, publicly display and perform, reproduce, license and sublicense, create derivative works, make and have made, and otherwise exploit any Feedback without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into our products and services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Feedback.

You hereby grant to Markforged and to authorized users of Markforged products and services a fully paid-up, royalty-free, worldwide, non-exclusive, irrevocable, transferable right and license in, under, and to any patents and copyrights enforceable in any country, issued to, obtained by, developed by or acquired by You that incorporate, are derived from and/or improve upon the intellectual property of Markforged; are developed using Markforged products or services; and are applicable to Markforged 3D printers or software, uses thereof or printing materials thereof.

You agree that Markforged may make nominative use of mark(s) and/or logos owned by you on Markforged.com and/or successor websites and/or printed embodiments of the same identifying you as a customer, and that the fact of your purchase of a Markforged product or service is not confidential. Markforged agrees to disclaim any endorsement or sponsorship by such nominative use of your mark(s) and/or logo(s), and to not use such mark(s) and/or logos in any way which is prejudicial to your reputation or interests or to the status or protection of your mark(s) or logos. Markforged acknowledges that your mark(s), logos and all goodwill associated with them are your exclusive property, and undertakes to cease to use them upon your request or upon termination of these Terms of Service.

## ERRORS, INACCURACIES, AND OMISSIONS

Occasionally there may be information on our Websites or in our product documentation that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times and availability. We reserve the right, at any time and with or without prior notice (including after you have submitted your order), to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information is inaccurate. Further, our Websites may contain certain historical information. Historical information, necessarily, is not current and is provided for your reference only.

Notwithstanding the foregoing, we undertake no obligation to update, amend or clarify information on our Websites or in our product documentation, including without limitation, pricing information, except as required by law. We are not responsible if information made available on our Websites is not accurate, complete or current. The material on our Websites are provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Any reliance on the material on our Websites is at your own risk.

## MISCELLANEOUS TERMS

**Entire Agreement** — These Terms of Service and the documents referenced herein constitute the entire agreement and understanding between you and us and govern your purchases of products and/or services from us (or our an authorized Markfoged supplier, as applicable), superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service). We object to and reject any additional or different terms proposed by you, including those contained in your purchase order or other ordering documents, acceptance or website. Our failure to object elsewhere to any provisions of any subsequent document, communication, or act of you shall not be deemed a waiver of any of the terms hereof. Our obligations hereunder are neither contingent on the delivery of any future functionality or features of the products or services nor dependent on any oral or written public comments made by us (including without limitation on our Websites) regarding future

functionality or features of any product or service. Any ambiguities in the interpretation of these Terms of Service shall not be construed against the drafting party. No employee or agent of Markforged has any authority to vary any of the terms and conditions set forth herein. The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms of Service.

**Waiver** — The failure of us to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision.

**Applicable Law** — To the maximum extent permitted by law, these Terms of Service and any separate agreements whereby we provide you service or products shall be governed by the federal laws of the United States.

**Actions Permitted** — Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than one year after the cause of action has accrued.

**Relationship of the Parties** — We and you agree that no joint venture, partnership, employment, or agency relationship exists between us as a result of these Terms of Service and that we are acting as an independent contractor in performing any services for you.

**Severability** — If any part of these Terms of Service is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision so that the terms shall remain in full force and effect, and the remainder of these Terms of Service shall continue in full force and effect.

**No Third Party Beneficiaries** — These Terms of Service shall not be interpreted or construed to confer any rights or remedies on any third parties.

**Data Protection** — You acknowledge and agree that it is necessary for us to collect, process and use your data in order to process sales, perform service, and confirm compliance with applicable laws. We will protect your information in accordance with our Privacy Policy.

By downloading, installing, or using any of the Markforged Products, I (the individual or legal entity) agree to be bound by these Terms of Service.

