

# Builder.ai<sup>®</sup>

## TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS (THE AGREEMENT) GOVERN CUSTOMER'S ACQUISITION AND USE OF BUILDER SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE THE SERVICES. EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF BUILDER SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

THE SERVICES MAY NOT BE ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE, OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES. BUILDER'S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING THE SERVICES, EXCEPT WITH BUILDER'S PRIOR WRITTEN CONSENT.

THIS AGREEMENT IS EFFECTIVE BETWEEN CUSTOMER AND BUILDER AS OF THE DATE OF CUSTOMER'S ACCEPTING THIS AGREEMENT (THE "EFFECTIVE DATE").

**CONTENTS OF AGREEMENT.** THIS AGREEMENT CONSISTS OF THE TERMS AND CONDITIONS, THE DEFINITIONS, THE BUILD CARD, AND THE ORDER FORM, IF INCLUDED.

## TERMS AND CONDITIONS

### 1. USE OF SERVICES AND CONTENT

**1.1 Services.** During the Term, Builder will provide the Services in accordance with the Agreement and Customer may access the Services and use the Services to create any Customer Application that has material value independent of the Services, in accordance with the Agreement. Unless otherwise provided in the applicable Buildcard, Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Buildcard or in the applicable online purchasing portal. Customer agrees that its purchases are not contingent on any guarantees, promises, or the delivery of any future functionality, features or timeline, or dependent on any oral or written public comments made by Builder.

**1.2 Account.** Customer must have an Account to use the Services and is responsible for the information it provides to create the Account, the security of its passwords, and for any use of its Account. Once Customer has Purchased Services, Builder will deliver and configure a Builder Home Account for Customer, where Customer access and use a project management platform to track and view customization or project progress relating to their Purchased

Services and Buildcard.

- 1.3 **Provision of Purchased Services.** Builder will (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Buildcards, Documentation, and Builder Studio One plan, (b) provide applicable Builder basic support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Builder shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Builder's reasonable control (the "Force Majeure"), and (d) provide the Services in accordance with laws and government regulations applicable to Builder's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's and Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Buildcard.
- 1.4 **Usage Limits.** Services and Content are subject to Usage Limits specified in Buildcards and Documentation. If Customer exceeds a contractual Usage Limit, Builder may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Builder's efforts, Customer is unable or unwilling to abide by a contractual Usage Limit, Customer will execute a Buildcard for additional quantities of the applicable Services or Content promptly upon Builder's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.
- 1.5 **Acceptable Use.** Customer may use the Service only for its business operations, and in accordance with this Agreement, the Documentation, the Usage Restrictions, the Usage Limits and the Acceptable Use Policy, available at <[builder.ai/terms/acceptable-use-policy](https://www.builder.ai/terms/acceptable-use-policy)>. In the event that Builder suspects any breach of the requirements of this Section, Builder may suspend access to the Service without advanced notice, in addition to such other remedies as we may have.
- 1.6 **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Buildcards, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-Builder Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Builder promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, Documentation, Buildcards and applicable laws and government regulations, and (e) comply with terms of service of any Non-Builder Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in Builder's judgment threatens the security, integrity or availability of Builder's services, may result in Builder's immediate suspension of the Services, however Builder will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension. Builder is not responsible or liable for any delay or failure of performance in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.
- 1.7 **Privacy.** Customer is responsible for any consents and notices required to permit (a) Customer's use and receipt of the Services and (b) Builder's accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the Agreement. Builder's Privacy Policy is available at <<https://www.builder.ai/terms/privacy>>.
- 1.8 **Protection of Customer Data.** Builder may store certain Customer Data to enable various features and functionality of the Services. Builder will only access or use Customer Data to provide the Services and data processing for Customer or as otherwise instructed by Customer and will not use it for any other Builder products, services, or advertising. Builder has implemented and will maintain administrative, physical, and technical safeguards to protect Customer Data. The terms of the data processing addendum at <<https://www.builder.ai/terms/dpa-scc>> ("DPA") posted as of the Effective Date are hereby incorporated by reference into this Agreement. Builder may only change the DPA where such change is required to comply with applicable law, applicable regulation, court order, or guidance issued by a governmental regulator or agency, where such change is expressly permitted by the DPA, or where such change (i) is commercially reasonable; (ii) does not result in a degradation of the overall security of the Services; (iii) does not expand the scope of or remove any restrictions on Builder's processing of Customer Data; and (iv) does not otherwise have a material adverse impact on Customer's rights under the DPA.
- 1.9 **End Users and Customer Applications.** Builder is not responsible for the content, accuracy or reliability of

Customer Applications or Customer Data. Customer's use of the Customer Applications or Customer Data is entirely at Customer's own risk and is governed by any agreement, terms or other relationship created between the Customer Application and End Users.

- 1.10 Builder Personnel and Contractors.** Builder will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Builder's obligations under this Agreement, except as otherwise specified in this Agreement. Builder may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor") but will remain liable to Customer for any subcontracted obligations.
- 1.11 Professional Services.** Builder may provide Professional Services to Customers, as agreed between the parties. These will be governed by terms of an addendum or separate agreement between the parties. Builder will provide any Professional Services set out in a relevant Buildcard in a professional and workmanlike manner, using reasonable skill and care in accordance with industry practice and any relevant statement of work.
- 1.12 Support and Maintenance Services.** The Buildcard will specify that the Customer is ordering standard or extended levels of support ("Studio One"). Subject to the payment of the applicable support or plan fees, Builder will support and maintain the Customer Application pursuant to the Studio One found at <[www.buider.ai/terms/studio-one](http://www.buider.ai/terms/studio-one)>. For avoidance of doubt, if Customer does not purchase or renew at least the standard Studio One, Builder has no obligation whatsoever to provide support, maintenance, updates, or upgrades to the Services or the Customer Application and Customer is responsible for technical maintenance and support of its Customer Applications.

## **2. BETA, FREE TRIAL OR FREE SERVICES**

- 2.1 Beta Services.** From time to time, Builder may make Beta Services available to Customer at no charge or with the applicable fees. Customer may choose to try such Beta Services or not in its sole discretion. Customer acknowledges that these Beta Services might not function as intended and agrees not to use them unless Customer accepts the risks of using pre-release technologies.
- 2.2 Free Trial or Free Accounts.** If Customer registers on Builder's or an Affiliate's website for a free trial or a free account (collectively, "Free Services"), Builder will make the applicable Free Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period ("Free Trial"), or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service(s), or (c) termination by Builder in its sole discretion. Certain features of the Services may not be available as Free Services. Builder's indemnity does not apply to use of the Free Services. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Any data Customer enters into the Free Services, and any customizations made to the Free Services by or for Customer, during Customer's Free Trial will be permanently lost unless Customer purchases a subscription to the same Services as those covered by the trial, purchases applicable upgraded services, or exports such data, before the end of the trial period.
- 2.3 Free Services.** Builder may make Free Services available to Customer. Use of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Free Services are provided to Customer without charge up to certain limits. Usage over these limits requires Customer's purchase of additional resources or services. Customer agrees that Builder, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Services or any part thereof. Customer agrees that any termination of Customer's access to the Free Services may be without prior notice, and Customer agrees that Builder will not be liable to Customer or any third party for such termination. Customer is solely responsible for exporting Customer Data from the Free Services prior to termination of Customer's access to the Free Services for any reason, provided that if Builder terminates Customer's account, except as required by law Builder will provide Customer a reasonable opportunity to retrieve its Customer Data. Builder's indemnity does not apply to use of Free Services.
- 2.4 Free Trial and Free Services Disclaimers.** NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY BUILDER" SECTION BELOW, THE FREE TRIAL AND FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND BUILDER SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE TRIAL AND FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE BUILDER'S LIABILITY WITH RESPECT TO THE FREE TRIAL AND FREE SERVICES SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, BUILDER AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER

THAT: (A) CUSTOMER'S USE OF THE FREE TRIAL AND FREE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE FREE TRIAL AND FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE TRIAL AND FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO BUILDER AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE FREE TRIAL AND FREE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

### **3. MARKETPLACE, NON-BUILDER PRODUCTS AND SERVICES**

- 3.1 Non-Builder Products and Services.** Builder or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Builder Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Builder provider, product or service is solely between Customer and the applicable Non-Builder provider. Builder does not warrant or support Non-Builder Applications or other Non-Builder products or services, whether or not they are designated by Builder as "certified" or otherwise, unless expressly provided otherwise in a Buildcard or Order Form. Builder is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Builder Application or its provider.
- 3.2 Integration with Non-Builder Applications.** The Services may contain features designed to interoperate with Non-Builder Applications. Builder cannot guarantee the continued availability of such Service features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Builder Application ceases to make the Non-Builder Application available for interoperation with the corresponding Service features in a manner acceptable to Builder.
- 3.3 Assumption of Risks.** In the event Customer provides Builder with consent, access, control, and usage of Customer Data and any other material shared with and provided by the Customer to Builder including, without limitation any existing database or other related materials, Customer acknowledges that Customer is voluntarily consenting and authorizing Builder to access and control the Customer Data and perform services. Customer agrees to accept and assume all risks and/or financial loss arising therefrom, whether caused by the ordinary negligence of Builder or otherwise, waives and releases, and indemnifies and holds Builder harmless from all claims arising from Builder's access, control or use of Customer Data.

### **4. FEES AND PAYMENT**

- 4.1 Fees.** Customer will pay all Fees specified in Buildcards, an Order Form, or applicable to your subscription. Except as otherwise specified herein, (i) Fees are based on Services and Content subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- 4.2 Invoicing, Payment and Payment Method.** Customer may pay for the services by using a valid credit card, an electronic fund transfer or a wire transfer or using another method pre-arranged and pre-approved by Builder including . Customer will provide Builder with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Builder. If Customer provides credit card information to Builder, Customer authorizes Builder to charge such credit card for all Purchased Services, including Fees for the initial subscription term and any renewal subscription term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Buildcard or Order Form. If the Buildcard or Order Form specifies that payment will be by a method other than a credit card, Builder will invoice Customer in advance and otherwise in accordance with the relevant Buildcard or Order Form. Unless otherwise stated in the Buildcard or Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Builder and notifying Builder of any changes to such information. Customer is obligated to pay all applicable fees without any requirement for Builder to provide a purchase order number on Builder's invoice (or otherwise).
- 4.3 Delinquent Payments and Suspension.** Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Builder in collecting such delinquent amounts. If Customer is late on payment for the Services, Builder may Suspend the Services or terminate the Agreement for breach.

- 4.4 Invoice Disputes & Refund.** Builder will not exercise its rights under the “Delinquent Payments and Suspension” section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. Any invoice disputes must be submitted before the payment due date. If the parties determine that certain billing inaccuracies are attributable to Builder, Builder will not issue a corrected invoice, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed invoice has not yet been paid, Builder will apply the credit memo amount to the disputed invoice and Customer will be responsible for paying the resulting net balance due on that invoice. To the fullest extent permitted by law, Customer waives all claims relating to any fees unless claimed within 60 days after the invoice date. Refunds (if any) are at Builder's discretion and will only be in the form of credit for the Services. Nothing in this Agreement obligates Builder to extend credit to any party.
- 4.5 Taxes.** Builder's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, accessible by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Builder has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Builder will invoice Customer and Customer will pay that amount unless Customer provides Builder with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Builder is solely responsible for taxes assessable against it based on its income, property and employees.
- 4.6 Financing.** In the event Customer accepts a financing, credit or loan agreement (the “Loan Agreement”) offered through Builder to fund part or all of the Fees associated with this Agreement (the “Financing Option”), Customer shall be solely responsible for all terms, conditions, and obligations under the Loan Agreement and the Financing Option, including Customer's obligation to pay all amounts specified in the Loan Agreement. In the event Customer breaches, defaults or is delinquent on the Loan Agreement or violates any terms of Loan Agreement or Financing Option, Builder, at its sole discretion, may suspend or terminate all Services and this Agreement.

## **5. INTELLECTUAL RIGHTS AND LICENSES**

- 5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Builder, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.2 Intellectual Property Rights.** Except as expressly stated in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. Customer owns all Intellectual Property Rights in Customer Data and Customer Applications (excluding the Services and Content), subject to payment of all applicable Fees. Builder owns all Intellectual Property Rights in the Services (including without limitation any models trained and improvements made to the Services pursuant to Section 1.8). Upon payment of all applicable Fees, Builder hereby grants Customer a worldwide, perpetual, non-exclusive license to the Building Blocks incorporated or used in the Customer Application, with the right to create derivative works of the Building Blocks for Internal Business Use.
- 5.3 License by Customer to Builder.** Customer grants Builder, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Builder Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Builder to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Builder Application with a Service, Customer grants Builder permission to allow the Non-Builder Application and its provider to access Customer Data and information about Customer's usage of the Non-Builder Application as appropriate for the interoperation of that Non-Builder Application with the Service. Subject to the limited licenses granted herein, Builder acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Builder Application, or such program code.
- 5.4 License by Customer to Use Feedback.** Customer grants to Builder and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Users relating to the operation of Builder's or its Affiliates' services.
- 5.5 Publicity.** Customer is permitted to state publicly that it is a customer of the Services. Builder may include Customer's name or logos in a list of Builder customers, online or in promotional materials. Builder may also verbally reference Customer as a customer of the Services. Any use of a party's logos will inure to the benefit of the

party holding Intellectual Property Rights to those logos. A party may revoke the other party's right to use its logos under this Section with written notice to the other party and a reasonable period to stop the use.

- 5.6 **U.S. Federal Agency.** The Services were developed solely at private expense and are commercial computer software and related documentation within the meaning of the applicable Federal Acquisition Regulations and their agency supplements.

## 6. CONFIDENTIALITY

- 6.1 **Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Buildcard to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, Builder may disclose the terms of this Agreement and any applicable Buildcard to a contractor or Non-Builder Application Provider to the extent necessary to perform Builder's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

- 6.2 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 7. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 7.1 **Representations.** Each party represents that (a) it has validly entered into this Agreement and has the legal power to do so, and (b) it will comply with all laws and regulations applicable to its provision, receipt, or use of the Services, as applicable.

- 7.2 **Builder Warranties.** Builder warrants that during an applicable subscription term (a) Builder will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-Builder Applications" section above, Builder will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

- 7.3 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PROVIDED FREE OF CHARGE, CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## 8. MUTUAL INDEMNIFICATION

- 8.1 **Indemnification by Builder.** Builder will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Builder in writing of, a Claim Against Customer, provided Customer (a) promptly gives Builder written notice of the Claim Against Customer, (b) gives Builder sole control of the defense and settlement of the Claim Against Customer (except that Builder may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Builder all reasonable assistance, at Builder's

expense. If Builder receives information about an infringement or misappropriation claim related to a Service, Builder may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Builder's warranties under "Builder Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Builder, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under a Buildcard for which there is no charge; or (IV) a Claim against Customer arises from Content, Customer Data, a Non-Builder Application or Customer's breach of this Agreement or applicable Buildcards.

- 8.2 Indemnification by Customer.** Customer will defend Builder and its Affiliates against any claim, demand, suit or proceeding made or brought against Builder (a) alleging that the combination of a Non-Builder Application or configuration or specification provided by Customer and used with the Services or to develop the Customer Application, infringes or misappropriates such third party's intellectual property rights, (b) arising from (i) Customer's use of the Services, Content, or Customer Application in an unlawful manner or in violation of the Agreement, the Documentation, or Buildcard, (ii) any Customer Data or Customer's use of Customer Data with the Services or Customer Application, or (iii) a Non-Builder Application provided by Customer, (c) arising out of or pertaining to Customer's or any End User's use of the Services or Customer Application, or (d) arising out of any aspect of the transaction between Customer's End User (Customer's customer), including but not limited to refunds, fraudulent transactions, and alleged or actual violation of laws (each a "Claim Against Builder"), and will indemnify Builder from any damages, losses, liability, settlements, attorney fees and costs, directly or indirectly, provided Builder (a) promptly gives Customer written notice of the Claim Against Builder, (b) gives Customer the option to control the defense and settlement of the Claim Against Builder (except that Customer may not settle any Claim Against Builder unless it unconditionally releases Builder of all liability, and except where Customer is unable to reasonably defend the Claim Against Builder), and (c) gives Customer all reasonable assistance, at Customer's expense. Customer further acknowledges and agrees that by entering into and performing its obligations under this Agreement, Builder is not assuming and shall not be exposed to the business and operational risks associated with Customer's business.
- 8.3 Exclusive Remedy.** Without affecting either party's terminations rights, this "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## **9. LIMITATION OF LIABILITY**

- 9.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE SIX MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.
- 9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **10. TERM AND TERMINATION**

- 10.1 Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

- 10.2 Term of Purchased Services.** The term of each subscription shall be as specified in the applicable Buildcard. Except as otherwise specified in a Buildcard, subscriptions, including any Studio One, will automatically renew for additional one year terms, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Buildcard, renewal of promotional or one-time priced subscriptions will be at Builder's applicable list price in effect at the time of the applicable renewal.
- 10.3 Termination for Breach and Bankruptcy.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 10.4 Suspension of Services.** Without limiting Builder's termination or other rights hereunder, Builder reserves the right to suspend Customer's access to the Services (and any related services, including but not limited to, development and maintenance and support services, such as Studio One) in whole or in part, without liability to Customer: (i) if Customer's account is forty-five (45) days or more overdue; (ii) for Customer's breach of this Agreement (including third party Loan Agreement); or (iii) to prevent harm to other customers or third parties or to preserve the security, availability or integrity of the Services. When practicable, Builder will use reasonable efforts to provide Customer with advance notice of the suspension (email sufficing). Unless this Agreement has been terminated, Builder will cooperate to restore Customer's access to the Services promptly after Builder verifies that Customer has resolved the issue requiring suspension.
- 10.5 Termination for Inactivity.** Builder reserves the right to terminate the provision of the Services upon 30 days' advance notice if, for a period of 60 days (a) Customer has not accessed the Service or the Account has had no network activity and (b) such Account has not incurred any fees for such Services.
- 10.6 Effect of Termination.** If the Agreement is terminated, then (a) all rights and access to the Services will terminate (including access to Customer Data, if applicable), unless otherwise described in this Agreement, and (b) all fees owed by Customer to Builder are immediately due upon receipt of the final invoice or as set forth in the final invoice.
- 10.7 Surviving Provisions.** The sections titled "Free Services," "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Effect of Termination," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement, and the section titled "Protection of Customer Data" will survive any termination or expiration of this Agreement for so long as Builder retains possession of Customer Data.

## **11. GENERAL PROVISIONS**

- 11.1 Export Compliance.** The Services, Content, other Builder technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Builder and Customer each represent that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Syria, or Crimea) or in violation of any U.S. export law or regulation.
- 11.2 Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 11.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Builder and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, promotions, proposals, or representations, written or oral, published or unpublished in any Builder marketing materials, including its websites and webpages, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Buildcards) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Buildcard, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 11.4 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.



- 11.5 Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 11.6 Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 11.7 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 11.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Builder will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.9 Builder Contracting Entity, Notices, Governing Law, and Venue.** The Builder entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled.

<b>If Customer is domiciled in:</b>	<b>The Builder entity entering into this Agreement is:</b>	<b>Notices should be addressed to</b>	<b>Governing law is:</b>	<b>Courts with exclusive jurisdiction :</b>
The United States of America, including North America (NA) and Latin America (LATAM)	Engineer.ai Corp., a Delaware corporation	26 S. Rio Grande Street, Suite 2072 Salt Lake City, Utah 84101, USA	Delaware and controlling United States federal law	Delaware, U.S.A.
India, including Asia-Pacific (APAC)	Engineer.ai India Private Limited	77B, Sector 18, IFFCO Road, Gurugram, Haryana India	India	Delhi, India
All Other, including Europe (EU), and Middle East and North Africa (MENA)	Engineer.ai Global Limited	North West House, 119 Marylebone Rd, London NW1 5PU, United Kingdom	England	England and Wales

- 11.10 Manner of Giving Notice.** The parties may use emails to satisfy written approval and consent requirements under this Agreement, provided notices of termination or an indemnifiable claim ("Legal Notices") must be clearly identifiable as Legal Notices the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.
- 11.11 Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## DEFINITIONS

### CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH BELOW.

“Account” means Customer’s Builder.ai account.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means this Master Service Agreement.

“Beta Services” means Builder services or functionality that Builder is still testing and developing and that may be made available to Customer to try at its option at no additional charge or with applicable fees or subscription, which may be designated as alpha, beta, pilot, limited release, developer preview, non-production, evaluation, demo, pre-release, trial, early access, or by a similar description.

“Buildcard” means the Customer specification, ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Builder or any of their Affiliates, including any addenda and supplements thereto. By entering into a Buildcard hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Notwithstanding any language to the contrary in the Buildcard, all Professional Services purchased under an Buildcard are purchased separately from the Services.

“Building Blocks” means reusable features provided by the Services to be used in Customer Applications. Builder retains exclusive right, title, and interest, in perpetuity and worldwide, to Building Blocks.

“Studio One” means the Services and support and maintenance subscription plan provided by Builder. The Studio One information and benefits are available online at <<https://www.builder.ai/terms/studio-one>>.

“Builder” means the builder.ai company described in the “Builder Contracting Entity, Notices, Governing Law, and Venue”, Section 11.9.

“Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Builder includes the Services and Content, and the terms and conditions of this Agreement and all Buildcards (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Builder services.

“Content” means information obtained by Builder from publicly available sources or its third-party content providers and made available to Customer through the Services, Beta Services or pursuant to a Buildcard.

“Customer” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Buildcards.

“Customer Application” means a software program, mobile application, or website that Customer creates or hosts using the Services.

“Customer Data” means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-Builder Applications. Customer Data excludes anonymized data, where personally identifiable information has been removed. Customer Data further includes all materials and information, including documents,

data, specifications, software, content, and technology that are provided to Builder (or granting Builder with access and control) by or on behalf of Customer in connection with this engagement.

“Documentation” means the applicable Service’s “Customer Policies” and its usage guides and policies, as updated from time to time, accessible via <<https://www.builder.ai/terms/customer-policies>> and <https://www.builder.ai/terms/studio-store-faqs>, and the Usage Limits provided on an order form (or signature page), or through the Builder online portals. For avoidance of doubt, the Documentation and Customer Policies, which includes the Builder Studio Customer Policies and the Builder Studio Store FAQ provided in the above links are hereby incorporated by reference in its entirety into this Agreement.

“End User” means an individual that Customer invites or permits to use the Services or a Customer Application. For clarity, End Users may include employees of Customer Affiliates and other third parties.

“Force Majeure” means unforeseeable circumstances or events, including, for example an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, pandemic, strike or other labor problem (other than one involving Builder employees), Internet service provider failure or delay, Non-Builder Application, or denial of service attack.

“Free Services” means Services that Builder makes available to Customer free of charge, including Service Level Agreement (“SLA”) that are provided free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

“Home Account” means an account on Builder Home, a Builder project management platform that provides status information about Customer Buildcard, including the customization progress, invoices and receipts, and provides support mechanism for interactions with Builder through the customization process.

“Intellectual Property Rights” means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

“Internal Business Use” means the internal business access and use of the Building Blocks for the Customer Application, and does not include use of the Building Blocks to provide any kind of service/action/assistance or support to any third party, including using or offering any Building Blocks on a service bureau basis or application service provider basis, or sublicense or rent or loan any Building Blocks or otherwise make any Building Blocks available to any third-party.

“Loan Agreement” means a third party credit, loan or financing agreement where Customer is offered a financial instrument for financing the purchase of Builder Services.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Marketplace” means an online directory, catalog or marketplace of applications that interoperate with the Services and any successor websites.

“Non-Builder Application” means Web-based, mobile, offline or other app, services or software functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on a Marketplace.

“Order Form” means any ordering documents, online registration, order descriptions or order confirmations referencing this Agreement, and includes Usage Limits and a subscription plan.

“Points” or “Feature Value (FV)” or “FVP” means a method for calculating usage and usage limit based on the feature or Building Block value (FV) that are selected for a Buildcard or used in the Customer Application.

“Purchased Services” means Services that Customer or Customer’s Affiliate purchases under a Buildcard or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

“Professional Services” means such Builder services as are set out in a separate agreement, addendum, quotation, statement of work, or Buildcard.

“Services” means the products and services, including but not limited to Building Blocks, software, apps, websites, and hosting, that are ordered by Customer under a Buildcard or online purchasing portal, provided to Customer, or made available online by Builder, including associated Builder offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-Builder Applications.

“Trademark Guidelines” means the Builder guide for use of trade names, trademarks, service marks, logos, and

other distinctive brand features of Builder, accessible via <<https://www.builder.ai/terms/trademark-guidelines>> and as updated from time to time.

“Usage Limits” means limitations set forth in this Agreement, the Documentation, the Purchased Services, the Buildcard, the Order Form (including signature page order forms), the applicable subscription plan or Builder Care, the purchased packages or plans, including limitations on features, storage, number of apps, support services, development priorities, resource assignments, and replacement services.

“Usage Restrictions” means Customer may not (a) make any Service or Content available to anyone other than Customer, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in a Buildcard or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-Builder Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Builder Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of Builder intellectual property except as permitted under this Agreement, a Buildcard, or the Documentation, (h) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in a Buildcard or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Builder without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Builder at Customer's request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.