

## Master Service Agreement

This Master Service Agreement (this "**Agreement**"), effective as of the "**Effective Date**" listed on the Order Form, is by and between **BUILDR, LLC**, a Delaware limited liability company, with offices located at 2418 E Millbank Dr, CA 92867 ("**Provider**") and the customer listed on the Order Form ("**Customer**"). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider has developed software tools to assist businesses with various business processes, including, without limitation, customer relationship management and management of construction projects; and

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

- (a) "**Aggregated Statistics**" means data and information related to Customer's and Authorized Users' use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- (b) "**Authorized User**" means Customer's consultants, contractors, property owners, clients, agents and others (but not employees of Customer) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.
- (c) "**Construction Volume**" means the aggregate dollar value of the construction work performed, planned, or put in place by Customer for all Customer Projects during a given time period.

- (d) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is uploaded, submitted or posted to the Services, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.
- (e) "**Customer Project**" means each distinct construction project constrained by a specific scope, budget, and schedule, as specified in a construction project agreement, that is in the construction phase. The Customer Project lifecycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, closeout, and warranty. Customer may use of the Services with only a limited number of simultaneous Customer Projects that are in the construction phase as set forth in the Order Form. The "construction phase" is considered to commence with the bid and award process, and is considered to be complete upon warranty term expiration. Customer may use the Services with an unlimited number of number of simultaneous projects that are NOT in the construction phase.
- (f) "**Documentation**" means Provider's user manuals, handbooks, and guides relating to the Services provided by Provider to Customer either electronically or in hard copy form.
- (g) "**Enhancements**" means minor modifications and revisions to the Services, including the addition of enhancements or improved performance made available by Provider to Customer without additional fees in the sole discretion of Provider; however, Enhancements do not include the addition of New Features not originally included as part of the Services described on the Order Form.
- (h) "**Maintenance Modifications**" means bug fixes, patches, modifications, or revisions to the Services that correct errors therein; however Maintenance Modifications do not include New Features not originally included as part of the Services described in the Order Form.
- (i) "**New Features**" means significant technological or performance improvements to the Service or additional or enhanced features that, subject to Provider's sole discretion,

are offered to Customer for an additional fee and are distinct from included Enhancements and Maintenance Modifications.

(j) **"Order Form"** means the order form signed by both Parties that is attached to this Agreement, on which the Customer is identified, and which specifies certain other agreed-upon terms including Customer's specific subscription information pertaining to the Services.

(k) **"Provider IP"** means the Services, the Documentation, Aggregated Statistics, any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, and any and all intellectual property rights embodied in or covering the foregoing. For the avoidance of doubt, Provider IP does not include Customer Data.

(l) **"Services"** means Provider's software programs and any associated user interfaces and related technology that Provider makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

(m) **"Site"** means the website located at buildrtech.com and all associated Provider mobile applications or associated web applications.

(n) **"Third-Party Products"** means any third-party products provided with or incorporated into the Services.

## 2. Access and Use.

(a) **Provision of Access.** Subject to and conditioned on Customer's payment of the Fees (as defined below) and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 11(g)) right to access and use the Services during the Term, solely for use by Customer, for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Customer Projects, and/or other use restrictions specified on a particular Order Form. Such use is limited to

Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. Provider shall provide the Customer with (a) support for the Services as outlined on the Order Form, and (b) access to Documentation, Enhancements and Maintenance Modifications as they become publicly available to Provider's other customers.

- (b) Employees and Sub-accounts. There is no limit on the number of Customer's employees who may access the Services during the Term. In addition, as a feature of certain Services, Customer may invite Authorized Users to access such Services via sub-accounts linked to the Customer's account (each, a "**Sub-account**"). Access through a Sub-account will provide an Authorized User the ability to view portions of the Customer's account and, at the discretion of the Customer, may include rights to upload Customer Data to the Customer's account. If applicable for the Service, there is no additional charge for setting up a Sub-account, and all Sub-accounts will terminate upon expiration or termination of this Agreement.
- (c) Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable (except in compliance with Section 11(g)) license to use and make copies of the Documentation during the Term solely for Customer's internal business purposes to the extent reasonably necessary to use the Services.
- (d) Service Updates. Provider may change, modify, upgrade, or discontinue any aspect or feature of the Services in whole or in part. Such changes, upgrades, modifications, additions, or deletions will be effective immediately upon posting such changes to the Site. Provider may, from time to time, develop New Features, which may be offered to Customer for additional fees.
- (e) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part, except as expressly permitted in this Agreement; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the

Services or Documentation to any third party, other than an Authorized User in accordance with the terms of this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

- (f) **Reservation of Rights.** Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.
- (g) **Suspension.** Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized End User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized End User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer or any Authorized User to access the Services; or (iii) in accordance with Section 5(a) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the

Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(h) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's and Authorized Users' use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

### 3. Customer Responsibilities.

(a) General. Customer is responsible and liable for all uses of the Services and Documentation provided by Provider under this Agreement, directly or indirectly, whether such use is permitted by, or in violation of, this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

(b) Third-Party Products. Provider may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

(c) **Beta Services.** From time to time, Provider may invite Customer to try certain beta services, including pilot, limited release, developer preview, non-production, or evaluation services ("**Beta Services**") at no charge. Customer may accept or decline any such trial. Beta Services will be clearly designated as such by Provider. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. Provider may discontinue Beta Services at any time and may never make them generally available. Provider will have no liability for, and Customer hereby releases Provider from, any liability or damage arising out of or in connection with any Beta Service.

4. **Service Levels and Support.** Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service levels set forth in **Exhibit A**.

5. **Fees and Payment.**

(a) **Fees.** Customer shall pay Provider the fees ("**Fees**") set forth on the Order Form without offset or deduction. Customer shall make all payments hereunder in U.S. dollars on or before the due date set forth on the Order Form. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) Provider may suspend Customer's and its Authorized Users' access to all or any portion of the Services until such amounts are paid in full.

(b) **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(c) Auditing Rights and Required Records. Provider may audit Customer's Construction Volume (as specified on a particular Order Form) to ensure compliance with agreed upon terms and pricing. Provider will give Customer at least ten (10) days advance notice of any such audit and will conduct the audit during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations. Such audit will be at Provider's expense; however, if any such audit should disclose any underpayment by Customer as compared to the rate sheet in the Order Form, Customer shall immediately pay Provider such underpaid amount, together with interest thereon at the rate specified in Section 5(a), and, if such underpayment is more than 5% of the amount that was supposed to be paid, Customer shall also pay Provider for Provider's expenses associated with such audit.

6. Confidential Information. Each Party shall, during and after the Term (as defined below), hold in strictest confidence and will not use for any purpose unrelated to its performance of this Agreement or disclose to any third party, any Confidential Information of the other Party. The term "**Confidential Information**" means all non-public information, whether business or technical in nature, that the other Party designates as being confidential, or any other information that, by its nature, should reasonably be considered confidential. Confidential Information includes, but is not limited to, information concerning business methods, pricing, business plans, new product launches, the source code used to provide the Services, customer and vendor information, internal policies and procedures, other financial information, and the terms and conditions of this Agreement. Each Party shall not disclose Confidential Information without the prior written consent of the other Party, except (i) as may be required by law or (ii) to its employees, contractors, or agents who have a specific need to know such information and are under a written obligation of confidentiality at least as restrictive as that contained in this Section. Information will not be deemed confidential if it (a) was known to the receiving Party and was acquired through proper methods, prior to its receipt from the disclosing Party, as evidenced by written records of the receiving Party; (b) is now or later becomes (through no act or failure on the part of the receiving Party) generally known through no breach of this Agreement by the receiving Party; (c) is supplied to the receiving Party by a third party that is free to make that disclosure without restriction; or (d) is independently developed by the receiving Party without use of or reference to any Confidential Information provided by the disclosing Party. The restrictions on disclosure imposed by this Section do not apply to information that is required by law or order of a



court, administrative agency, or other governmental body to be disclosed by the receiving Party, provided that in each such case the receiving Party provides the disclosing Party with prompt written notice of such order or requirement and reasonably assists the disclosing Party, at the disclosing Party's expense, in seeking a protective order or other appropriate relief. Upon termination of this Agreement, each Party shall promptly cease all further use of Confidential Information, return to the other Party all physical materials containing Confidential Information, whether the materials were originally provided by the disclosing Party or copied or otherwise prepared by the receiving Party, and erase or otherwise destroy any Confidential Information kept by either Party in electronic or other non-physical form. The Parties acknowledge that the receiving Party will not be required to return to the disclosing Party or destroy those copies of Confidential Information residing on the receiving Party's backup or disaster-recovery systems, or which must be maintained for regulatory or policy purposes. Such termination by either Party will not affect each Party's continuing obligations under this Section.

## 7. Intellectual Property Ownership; Feedback.

- (a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP.
- (b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider (i) a non-exclusive, fully-paid up, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and (ii) a non-exclusive, perpetual, irrevocable, fully-paid up, royalty-free, worldwide license to reproduce, distribute, prepare derivative works based on, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.
- (c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions,

suggestions, or the like ("**Feedback**"), Provider may, but is not obligated, to use such Feedback without any attribution or compensation to any party. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, any ideas, inventions, know-how, concepts, techniques, or other intellectual property rights embodied in or covering the Feedback.

## 8. Limited Warranty and Warranty Disclaimer.

(a) Provider does not make any representations or guarantees regarding uptime or availability of the Services except as specifically set forth in **Exhibit A**. The remedies set forth in **Exhibit A** are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 8(a).

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SERVICES ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b)

INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED ONE YEAR'S WORTH OF FEES PAYABLE TO PROVIDER AS SET FORTH IN THE ORDER FORM FOR THE TIME PERIOD COVERING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM.

## 10. Term and Termination.

(a) **Term.** The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement, will continue in effect for the term specified in the Order Form (the "**Initial Term**"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms (each such period a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless earlier terminated pursuant to this Agreement or either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the Initial Term or then-current Renewal Term.

(b) **Termination.** In addition to any other express termination rights set forth in this Agreement:

(i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than ten days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(e) or Section 6;

(ii) either Party may terminate this Agreement upon the material breach of this Agreement by the other Party, effective (A) on written notice to the other Party, if such breach is incapable of cure; or (B) 30 days after written notice to the breaching Party, if such breach is capable of cure, but remains uncured after such 30-day period;

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; and

(iv) If a third-party initiates a claim, suit, action, or proceeding that the Services or any use of the Services infringe or misappropriate such third party's intellectual property rights or such a claim, suit, action or proceeding appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Services, or any component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use of the Services. If Provider determines, in its sole discretion, that neither alternative is commercially reasonable, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer and each Authorized User shall immediately discontinue use of the Services and Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider's Confidential Information and certify in writing to the Provider that the Provider's Confidential Information has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

(d) Survival. This Section 10(d) and Sections 1, 2(e), 2(f), 2(h), 3(a), 5, 6, 7, 8, 9, 10(c), and 11 will survive any termination or expiration of this Agreement. No other provisions of this Agreement will survive the expiration or earlier termination of this Agreement.

## 11. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, and the Order Form, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the Order Form; (ii) second, the Exhibits to this Agreement; (iii) third, this Agreement, excluding its Exhibits; and (iv) fourth, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the Order Form (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or electronic mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective: (i) when delivered personally; (ii) one business day after deposit with a nationally-recognized overnight courier, with written confirmation of receipt; (iii) one business day after transmission by fax or electronic mail; or (iv) three business days after having been sent by registered or certified mail, return receipt requested, postage prepaid.

- (c) Force Majeure. In no event will either Party be responsible or liable for any failure or delay in the performance of its obligations under this Agreement (other than obligations to make payments required by this Agreement) arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer services; it being understood that each Party will use commercially reasonable best efforts to resume performance as soon as practicable under the circumstances.
  
- (d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
  
- (e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
  
- (f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the

licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the Orange County, California, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- (g) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- (h) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules that prohibit or restrict the export or re-export of the Services or any Customer Data outside the U.S., and complete all required undertakings related thereto (including obtaining any necessary export license or other governmental approval).
- (i) U.S. Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the U.S. Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other U.S. Government users and their contractors.
- (j) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(e), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief,

including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(k) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including .pdf) or other reliable electronic means and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.



## **Exhibit A**

### **SERVICE LEVELS AND SUPPORT**

Capitalized terms used but not defined in this Exhibit A have the meaning given to those terms in the Master Service Agreement to which this Exhibit is attached.

#### **A. Service Level Agreement**

Provider has a service-level objective for the Services of 99.9% availability, 24 hours a day, 7 days a week, 365 days a year, excluding downtime resulting from (i) problems caused by factors outside of Provider's reasonable control, (ii) Customer's systems or equipment, (iii) scheduled maintenance, and (iv) third party products, services or equipment not supplied by Provider.

#### **B. Support**

During the Term, Customer will have access to technical support via telephone, online chat, email, or tutorials during the hours of 8:00 a.m. to 5:00 p.m. Pacific Time Monday through Friday, excluding holidays. Support does not include training or implementation of the Services and does not include general training for use of personal computers or other online software.

Once Provider receives a support request from Customer, Provider will use commercially reasonable efforts to fix any errors that Customer is experiencing, or answer any questions the Customer might have regarding use of the Services.

#### **C. Data**

During the Term, Provider will make commercially reasonable efforts (a) to protect the security of Customer Data, and (b) to backup Customer Data; however, the Services do not replace the need for Customer to maintain its own regular data backups and redundant data archives.

Provider contracts with a third-party data center provider to provide essential technology services such as network connectivity to the Internet for the servers running the Services.

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Upon restriction, suspension or termination of a Customer account, and assuming there has been no material breach of this Agreement by Customer, Customer will be allowed, for no additional cost, to extract all Customer Data that can be exported from the Services. At Provider's sole discretion, an area or portion of the Services may remain active, but would limit Customer to "read only" access. Customer shall accept this access as a full substitute for a complete file export of Customer's project data.

## **D. Maintenance**

If a system failure occurs that creates an outage of the Services, Provider will use commercially reasonable efforts to end the outage as quickly as possible. Outages due to the Internet, hosting providers, and/or Customer or Authorized User systems are outside Provider's control and, in that case, Provider will assist the Customer in the diagnosis but might not be able to resolve the issue.

Provider or hosting providers will occasionally perform proactive and preventative maintenance, such as updating servers and routers with security patches, and upgrades to software. Provider will use commercially reasonable efforts to perform such maintenance during hours that are convenient to the Customer.