



## MASTER ORDERING AGREEMENT

This Master Ordering Agreement ("**Agreement**") is made as of the Master Ordering Agreement Effective date indicated on the signed and executed Sales Order ("**Effective Date**"), between Buildscafe, Inc. operating as Vidyard ("**Buildscale**") and the customer ("**Customer**") as identified in the signed and executed Sales Order.

This Agreement, together with the Sales Order(s) (including the Product Overview attached thereto or referenced therein) and the Subscription Service Guide, is the final and entire agreement of the parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous oral or written agreements, representations and negotiations, including, but not limited to, any terms contained in Customer's purchase order.

FOR VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES, EACH ACTING UNDER DUE AND PROPER AUTHORITY, EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

## GENERAL TERMS AND CONDITIONS

### 1. PROVISION OF SERVICES

Buildscale will make the following purchased services available to Customer, subject to the terms and conditions of this Agreement and each mutually acceptable written ordering document signed or otherwise accepted by both Customer and Buildscale (each, a "**Sales Order**") and the product overview attached hereto or referenced herein or attached to a Sales Order ("**Product Overview**"), including without limitation: (a) use of the Subscription Service (as defined below); (b) professional services, custom software development and training services ("**Professional Services**"); and (c) any additional services. "**Subscription Service**" means the Vidyard Platform and Vidyard Applications (ordered by Customer under a Sales Order) which are made available by Buildscale as a software as a service (SaaS) offering online via web access designated by Buildscale. Each Sales Order is hereby incorporated into and made a part of this Agreement for that order.

### 2. ORDERING

2.1. **SUBSCRIPTION SERVICE.** A Sales Order for a Subscription Service shall specify the term of authorized use of the Subscription Service ("**Subscription Term**"), the fees and other charges for the Subscription Service, any special payment terms, the scope of use, and the numbers, types and identifiers of permitted users, number of allowable videos, allowable usage volume, integrations, features, Customer Content, devices, capacity at or through which Customer is permitted to use the Subscription Service. If Customer exceeds its permitted use of the Subscription Service, Customer agrees to pay such Overage fees as set out in the applicable Sales Order. Buildscale may review Customer's use of the Subscription Service, and Customer shall provide any reasonable assistance, to verify Customer's compliance with the Agreement. Buildscale may suspend Customer's use of the Subscription Service after giving thirty (30) days' written notice of non-compliance identified in such review, in addition to any other rights or remedies Buildscale may have.

2.2. **PROFESSIONAL SERVICES.** Professional Services to be provided to Customer shall be described in one or more written statements of work ("**SOW**") signed by Buildscale and Customer.

2.3. **PAYMENT TERMS.** Except as expressly set forth in the applicable Sales Order or SOW: (a) Subscription Service fees are invoiced annually or quarterly in advance; (b) Professional Services fees are invoiced (i) as to fifty percent (50%) of the fees payable under the applicable SOW on execution thereof and (ii) as to the remainder of the fees upon completion of the Services; and (c) Customer shall pay each invoice in full within thirty (30) days after the date of invoice in (United States dollars). If Customer specifies in a Sales Order that it is issuing a purchase order for such Sales Order, then Buildscale shall reference the applicable Customer purchase order number on its invoices (solely for administrative convenience) so long as Customer provides the purchase order number to Buildscale at least five (5) business days prior to the date of the applicable Buildscale invoice. Late payments shall accrue interest at a rate of one and one-half percent (1.5%) per month or the legal maximum interest rate, whichever is lower. If Customer is delinquent in payment of amounts for the Services owed hereunder, Buildscale may give notice to Customer of such delinquency and, in such case, Customer will have thirty (30) days from the date of Buildscale's written notice to cure the delinquency. If Customer fails to cure the delinquency, Buildscale may, in addition to its other rights and remedies provided hereunder or at law, terminate or suspend the affected service.

2.4. **TAXES.** All payments required by this Agreement are exclusive of federal, provincial, local and foreign taxes, duties, tariffs, levies and similar assessments. Customer agrees to bear and be responsible for the payment of all taxes, duties, tariffs, levies, fees and charges of any kind, including sales, use, excise or value added taxes, and all other similar charges (collectively, "**Taxes**") which are imposed on transactions under this Agreement by or under the authority of any government body, excluding Taxes based solely upon Buildscale's net income. Customer shall make all payments required without deduction of any Taxes, except as required by law, in which case the amount payable shall be increased as necessary so that after making any required deductions and withholdings, Buildscale receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, Customer shall provide a certificate of exemption upon execution of this Agreement and, after receipt of valid evidence of exemption, Buildscale shall not charge Customer any Taxes from which it is exempt.

2.5. **AFFILIATES.** "**Affiliates**" shall mean any person or entity directly or indirectly Controlling, Controlled by or under common Control with a party to the Agreement, where "**Control**" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Customer may, subject to Buildscale's prior written approval, provide access to the Subscription Service to one or more of its Affiliates ("**Customer Affiliates**") subject to the terms, conditions and restrictions in the Agreement. Customer shall be responsible for the acts and omissions of the Customer Affiliate for

its use of the Subscription Service. No Customer Affiliate shall have the right to take any legal action against Buildscalet under the Agreement or any Sales Order unless such Customer Affiliate executes a Sales Order directly with Buildscalet.

### 3. GRANT OF USE RIGHTS; OWNERSHIP; CUSTOMER RESTRICTIONS

3.1. VIDYARD APPLICATIONS. The Product Overview describes (i) the business processes supported within the Vidyart applications (collectively, "**Vidyart Applications**") and (ii) the Vidyart Platform. To the extent set forth under a Sales Order, Buildscalet hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable worldwide right during the Subscription Term to access and use the purchased Vidyart Applications and Vidyart Platform for Customer's personal use as described in the Product Overview and the view, download and print Reports.

3.2. BUILDSCALE CONTENT. The Subscription Service contains Content (as defined below) owned by Buildscalet or its providers or licensors ("Buildscale Content"). Buildscale Content is protected by copyright, trademark, patent, trade secret and other laws, and Buildscalet owns and retains all rights in the Buildscale Content and the Subscription Services. Customer is hereby granted a limited, revocable, non-sublicensable license to view, or listen to, as applicable, the Buildscale Content solely for Customer's personal, internal use in connection with viewing and using the Subscription Service.

3.3. THIRD PARTY SERVICES. The Subscription Service may contain features or functionality designed to interoperate and/or integrate with software, applications or services that are provided by a Person other than Buildscalet (e.g., Buildscale applications) ("**Third Party Services**"). To use such features, Customer may be required to obtain access to such Third Party Services from their providers (which may require Customer to pay fees to the provider of such Third Party Services). If the provider of any such Third Party Services ceases to make the Third Party Services available for interoperation with the corresponding Services features or functionality, Buildscale may cease providing such features or functionality without entitling Customer to any refund, credit, or other compensation.

3.4. DOCUMENTATION. Buildscalet hereby grants to Customer a non-exclusive, non-transferable, worldwide right during the Subscription Term to access and use the user documentation relating to the operation and use of the Subscription Service that is provided by Buildscale to Customer under the Agreement, as updated by Buildscale from time to time ("**Documentation**").

3.5. CUSTOMER DATA. Customer hereby grants Buildscale a non-exclusive, non-transferable, worldwide right to use the Content and electronic data specifically pertaining to Customer and/or its users that is processed using the Subscription Service (collectively "**Customer Data**").

3.6. SOFTWARE. Buildscalet may provide Buildscale software products ("**Software**") for use in connection with the Subscription Service. Any Software is licensed and not sold (even if for convenience Buildscale makes reference to words such as "sale" or "purchase"), and Buildscalet grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable, non-exclusive license to install and execute the Software on machines operated by or for Customer solely to permit Customer to use the Subscription Service during the Subscription Term in accordance with the terms and conditions of this Agreement. The Software or Deliverables (as defined in Section 3.18) may include code that is licensed under third party license agreements, including open source, made available or provided with the Software or Deliverables as applicable.

3.7. ACCOUNTS. Customer represents and warrants that all information that Customer submits or has submitted when registering Customer's Account is accurate, current and complete, and that Customer will keep the Customer Account information accurate, current and complete. Customer is solely responsible for the activity that occurs on Customer's Account, whether authorized by Customer or not, and Customer agrees to keep Customer's Account information secure. Customer may not share or otherwise allow anyone else to use Customer Account. Customer is solely responsible for the confidentiality and use of Customer Account. Customer may not transfer Customer Account to any third party without Buildscale's prior written approval. Customer must notify Buildscale immediately of any breach of security or unauthorized use of Customer's Account or known or suspected breach of the Service. BUILDSCALE WILL NOT BE LIABLE FOR ANY LOSS INCURRED DUE TO ANY UNAUTHORIZED USE OF CUSTOMER'S ACCOUNT. CUSTOMER, HOWEVER, MAY BE LIABLE FOR ANY LOSS INCURRED BY BUILDSCALE OR OTHERS CAUSED BY CUSTOMER'S ACCOUNT (INCLUDING, BUT NOT LIMITED TO, ANY ACTIVITY UNDER OR THROUGH CUSTOMER'S ACCOUNT), WHETHER CAUSED BY CUSTOMER OR BY AN UNAUTHORIZED PERSON. The foregoing sentence shall survive the termination or expiration of this Agreement.

3.8. TITLE AND OWNERSHIP. Buildscalet and its suppliers and licensors own all right, title and interest in and to the Subscription Service, Software Documentation including, without limitation, associated intellectual property rights under copyright, trade secret, patent, trademark and/or other applicable domestic and international laws. As between Customer and Buildscale, any and all trademarks that Buildscale uses in connection with the Services are owned by Buildscale and any goodwill associated with the use of such marks shall inure to the benefit of Buildscale. In no event shall the Services be deemed sold or assigned to Customer. The Subscription Service (including, but not limited to, all Buildscale Content (as defined below)) remain the property of Buildscale and are licensed and not sold to Customer under this Agreement. Customer acknowledges and agrees that there are no implied licenses granted under this Agreement, and all rights, not granted to Customer hereunder shall remain with Buildscale. Nothing in this Agreement shall adversely affect any rights and recourse to remedies, including, but not limited to, injunctive relief, that Buildscale may have under any applicable laws relating to the protection of Buildscale intellectual property or other rights.

#### 3.9. CUSTOMER CONTENT.

(a) Buildscale does not claim any ownership rights in any Content the Customer uploads to the Subscription Service ("**Customer Content**"). After upload of Customer Content on, through, or in connection with the Subscription Service, Customer continues to retain any such rights that Customer may have in Customer Content, subject to the following limited license granted by Customer in this Agreement. By uploading any Content on, through or in connection with the Subscription Service, Customer hereby grant to Buildscale a worldwide, royalty-free, fully paid-up, non-exclusive, sublicensable and transferable license to Customer Content in order to perform such acts with respect to Customer Content solely as are reasonable or necessary to provide the Subscription Service, including without limitation, the right to: (i) deliver Customer Content in accordance with the preferences set by Customer utilizing the Vidyart Platform; (ii) secure, encode, reproduce, host, cache, route, reformat, analyze and create algorithms and reports based on access to and use of Customer Content; (iii) use, exhibit, broadcast, publish, publicly display, publicly perform, distribute, create derivate works of, promote, copy, store, and/or reproduce (in any form) Customer Content on or through the Subscription Service; and (iv) utilize Customer Content to test Buildscale's internal technologies and processes. Customer also hereby grants, or allows Buildscale to grant, each Visitor, or other user of the Subscription Service a non-exclusive license to use, access and view Customer Content through the Subscription Service, and to use, reproduce, distribute,



display and perform Customer Content as permitted through the functionality of the Subscription Service and under this Agreement. The foregoing licenses granted by Customer in Customer Content terminate after the earlier of when (a) Customer removes or deletes Customer Content from the Subscription Services, or (b) the termination or expiration of this Agreement. Customer acknowledges and agrees, however, that Buildscafe may retain, but not display, distribute, or perform, server copies of Customer Content that have been removed or deleted. Buildscafe reserves the right to limit the storage capacity of Customer Content as set out in the Sales Order.

(b) Customer represents and warrants that: (i) it owns the Customer Content or otherwise has the right to grant the licenses set forth in Section 3.9(a), (ii) the uploading of Customer Content on, through, or in connection with the Subscription Service does not and will not violate the privacy rights, personal, publicity rights, copyrights, contract rights or any other rights of any Person; (iii) no fees or payments of any kind shall be due by Buildscafe to any organization for the distribution of Customer Content as contemplated by this Agreement and Customer agrees to pay for all royalties, fees, and any other monies owing to any Person by reason of the use of any Customer Content; and (iv) if applicable, Customer Content may be uploaded and made publicly available on YouTube or similar services, and that Customer Content otherwise complies with YouTube's terms of service in effect from time to time, the current version of which may be located at <http://www.youtube.com/t/terms> or the terms of service of such other similar services to which the Customer Content has been uploaded and made publicly available.

(c) Customer also represents and warrants that Customer is solely responsible and liable for: (i) obtaining all necessary consents, permissions, licenses and waivers from copyright owners, artist(s), actors, directors, performers, writers, producers, or any other individuals who appear in the Customer Content or the results and proceeds of whose services are utilized in the Customer Content which Customer provides; (ii) obtaining any required synchronization and master use licenses from the owners of (or their designated representatives) the musical compositions and sound recordings embodied in the Customer Content; (iii) any payments to any labor unions and guilds, to the extent required under applicable collective bargaining agreements or otherwise (e.g., residuals, re-use, rerun and other similar fees) with respect to Customer Content and the use thereof pursuant to the Subscription Service; and (iv) obtaining public performance licenses from public performance rights collection organizations (e.g., SOCAN, ASCAP, BMI or SESAC).

3.10. **CONTENT ON THE SUBSCRIPTION SERVICE.** Customer acknowledges and agrees that Buildscafe and the Subscription Service are passive conduits of the Customer Content and Buildscafe has no obligation to edit, review, monitor or oversee Customer Content submitted, uploaded, distributed, retrieved, or viewed in connection with use of the Subscription Service, and Buildscafe assumes no responsibility or liability relating thereto. Customer further acknowledges and agrees that the Subscription Service and the Content provided by third parties may contain errors or omissions. Under no circumstances will Buildscafe be liable in any way for any user or other third party Content or Customer Content, including, but not limited to, for any defamation, infringement, falsehoods, errors or omissions in any such Content, or for any loss or damage of any kind incurred as a result of the use or publication of any such content posted, delivered, emailed or otherwise transmitted via the Subscription Service. Buildscafe cannot and does not guarantee the accuracy, completeness and quality of any Content appearing on, or otherwise made available by, the Subscription Service, including, but not limited to, any Buildscafe Content. Customer acknowledges and agrees that reliance on any Content accessible through the Subscription Service is solely at Customer's own risk. **BUILDSCAFE WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR THE USE, MISUSE OR RELIANCE ON ANY CONTENT.** Customer acknowledges and agrees that Buildscafe is not responsible for preventing or identifying infringement of intellectual property rights or other violations associations with any Content available on the Services, including without limitation Customer Content, and Buildscafe assumes no responsibility for screening or monitoring for possible (i) infringement or enforcing Customer rights or third party rights with respect to any Content (including, but not limited to, Customer Content), (ii) unlawful, inappropriate or unpermitted use, (iii) libel, falsehoods, errors or omissions contained in any Content, or (iv) noncompliance with Applicable Laws.

3.11. **PROHIBITED CONTENT.** Customer is solely responsible for the Content that Customer uploads in connection with the Subscription Service. In connection with Customer use of the Subscription Service, Customer may only upload Content for the lawful, stated purposes of the Subscription Service. Buildscafe reserves the right to investigate and take appropriate legal action against anyone who, in Buildscafe's sole discretion, violates this provision, including, without limitation, removing the offending Content from the Subscription Service, terminating or suspending Customer's Account or access to the Subscription Service, and this Agreement and/or reporting such Content or activities to law enforcement authorities. Customer shall not upload or otherwise use in connection with the Subscription Service any Prohibited Content. **"Prohibited Content"** includes, without limitation, Content that, in the sole discretion of Buildscafe: (i) is pornographic or contains sexually explicit content (including nudity) or offensive subject matter or contains a link to an adult website; (ii) contains graphic or gratuitous violence; (iii) conveys a message of hate against any individual or group based upon their race, religion, age, gender, nationality, sexual orientation or language; (iv) encourages or glorifies drug use; (v) is predatory in nature, or is submitted for the purpose of harassment or bullying; (vi) is highly repetitive and/or unwanted, including "Spam" messages; (vii) is offensive or promotes or otherwise incites racism, bigotry, hatred or physical harm of any kind against any group or individual; (viii) constitutes or promotes information that Customer knows is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous; (ix) furthers or promotes any criminal activity or enterprise or provides instructional information about illegal activities including making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses; or (x) violates or attempts to violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any Person.

3.12. **CONTENT PRESERVATION AND DISCLOSURE.** Customer expressly acknowledge and agree that Buildscafe may preserve and store Customer Content and may also disclose Customer Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal processes; (ii) this Agreement; (iii) respond to claims that any Customer Content violates the rights of any Person; or (iv) protect the rights, property, or personal safety of Buildscafe, its licensors, suppliers, partners, resellers, or users and/or the public.

### 3.13. INFORMATION RIGHTS AND USER DATA.

(a) Buildscale and its affiliates may retain and use, subject to the terms of the Privacy Policy, information collected in Customer's use of the Subscription Service. Buildscale will not share Customer's User Data or any Third Party's User Data with any third parties unless Buildscale (i) has Customer consent for the use of any User Data or any Third Party's consent for the use of the Third Party's User Data; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of User Data is reasonably necessary to protect the rights, property or safety of Buildscale, its users or the public; or (iii) provides User Data in certain limited circumstances to third parties to carry out tasks on Buildscale's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Buildscale. When this is done, other than in connection with Third Party Services, it is subject to agreements that oblige those parties to process User Data only on Buildscale's instructions and in compliance with this Agreement and appropriate confidentiality and security measures. Where Customer elects to use Third Party Services, Customer is deemed to consent to the sharing of User Data with the providers of such Third Party Services.

(b) The Subscription Service contains software to track, capture and aggregate User Data to assist Buildscale in optimizing delivery of Customer Content. Customer's use of the Subscription Service constitutes its acceptance of this feature. Buildscale only uses this data to create anonymized data. Customer hereby acknowledges and agrees that Buildscale may use Customer Content and User Data solely for the purposes of extracting and creating anonymized data therefrom that describes or otherwise relates to or is derived from: (i) Customer's use and/or operations of the Subscription Service and/or the Vidyad Platform; and/or (ii) viewers or users of Customer Content (collectively, "**Meta Data**"). Buildscale shall exclusively own all rights, including, but not limited to, intellectual property rights, in and to all Meta Data, whether as part of derivative works or otherwise and that Buildscale shall be entitled to the unrestricted use and dissemination of all Meta Data works for any purpose (commercial or otherwise). If Customer enables syndication of Customer Content on third party websites (which Customer may be permitted to do via Customer Account), Customer, and not Buildscale, is solely responsible for notifying each such third party website that Buildscale may track information regarding the third party users and generate User Data.

3.14. THIRD PARTY MATERIALS/PRODUCTS/SERVICES. Any third party products, Content, services or links displayed on or through the Subscription Service are not referrals or endorsements of any product, service or provider; any and all such offerings are displayed solely for convenience only. The Subscription Service may in some cases be permitted for use with third party applications (including, without limitation, websites, widgets, software, or other software utilities) ("**Application(s)**") that interact or integrate with the Subscription Service. These Applications and Third Party Services may import or export data related to Customer Account, activity and/or Content and otherwise gather data from Customer. These Applications and Third Party Services are provided solely as a convenience to Customer, and Buildscale is not responsible for such Applications or Third Party Services. Applications and Third Party Services may also be subject to their own, separate license agreements or special pass-through terms, and Customer assume all risks and liabilities associated with the use of any such third party offerings, including, without limitation, the obligation to pay fees in connection therewith. SUCH APPLICATIONS AND THIRD PARTY SERVICES ARE OWNED OR OPERATED BY THIRD PARTIES THAT ARE NOT RELATED TO WITH OR SPONSORED BY BUILDSCALE AND MAY NOT BE AUTHORIZED FOR USE WITH THE SUBSCRIPTION SERVICE IN ALL COUNTRIES. USE OF AN APPLICATION IS AT CUSTOMER OWN OPTION AND RISK. For clarity, nothing in this Section 3.14 diminishes Buildscale's obligations to Customer under this Agreement with respect to Buildscale's (or its licensors' or suppliers') technology within the Subscription Service (the "**Buildscale IP**"), but instead relates to any access and/or use of third party products and/or services that Customer elect to utilize in connection with the Buildscale IP (regardless of whether Buildscale provides integration services at Customer request in connection with third party products and/or services).

3.15. NETWORKS. Customer acknowledges and agrees that the technical processing and transmission of the Subscription Service, including Customer Content, may involve (i) transmissions over various networks; and/or (ii) changes to conform and adapt to technical requirements of connecting networks or devices. Customer further acknowledge and agree that use of or connection to the Internet provides the opportunity for unauthorized Persons to circumvent such precautions and illegally gain access to the Subscription Service, the Vidyad Platform or Customer Content. ACCORDINGLY, BUILDSCALE DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY CONTENT, DATA OR INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

3.16. SUBMISSION OF FEEDBACK AND SUGGESTIONS. Customer may from time to time provide to Buildscale ideas, comments, suggestions or other feedback regarding improvements or additions to the Subscription Service. By submitting to Buildscale comments, messages, suggestions, ideas, concepts, feedback or other information about the Subscription Service, Buildscale and/or its operations (collectively, "**Submissions**"), Customer hereby: (a) represents and warrants that none of the Submissions are confidential or proprietary to Customer or to any other Person; (b) represents and warrants that none of the Submissions or the making thereof breach any agreement to which Customer is a party; and (c) grants to Buildscale and its Affiliates an exclusive fully paid-up, royalty-free, perpetual, irrevocable, unrestricted, transferable, sub-licensable, worldwide right and license to: (i) use, copy, publish, transmit, perform and display the Submissions for any purpose; (ii) create derivative works from such Submissions; and (iii) implement and use the Submissions and any suggestions, concepts or ideas contained therein without compensation to Customer from Buildscale or any other Person. Customer also waives in favour of Buildscale and its successors and assigns any and all of Customer moral rights in and to all Submissions. Furthermore, Customer agrees that Buildscale is not responsible for the confidentiality of any Submissions.

3.17. RESTRICTIONS. Customer shall not (and shall not permit others to): (i) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share the Subscription Service, Software, Development Materials or Documentation, or make any of them available for access by third parties, including without limitation, in the manner of a service bureau or hosted application; (ii) create derivative works based on or otherwise modify the Subscription Service, Software, Development Materials (except as provided in Section 3.6) or Documentation; (iii) disassemble, reverse engineer or decompile the Subscription Service or Software; (iv) access the Subscription Service, Software, Development Materials or Documentation in order to develop a competing product or service; (v) use the Subscription Service or Development Materials to provide a service for others; (vi) use the Vidyad Platform to operate more or different type of applications than permitted under the applicable Sales Order; (vii) use or send viruses or other harmful computer code; (viii) interfere with the integrity of the Subscription Service or its data; (ix) remove or modify a copyright or other proprietary rights notice on or in the Subscription Service, Software, Development Materials or Documentation; (x) use the Subscription Service to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (xi) use a computer or computer network to cause physical injury to the property of another; (xii) violate any law or regulation of the United States, any state thereof or other government authority; (xiii) disable, hack or otherwise interfere with any security, digital signing, digital rights management,





verification or authentication mechanisms implemented in or by the Subscription Service; (xiv) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Subscription Service; (xv) disrupt the integrity of the Subscription Service; (xvi) temporarily or permanently remove, copy, add, modify, halt or disable any computer data, computer programs or computer software from a computer or computer network without authorization; (xvii) cause a computer to malfunction, regardless of how long the malfunction persists; or (xviii) alter, disable, or erase any computer data, computer programs or computer software without authorization.

3.18. **DELIVERABLES.** Subject to the provisions of this Section 3.18, Buildscafe shall assign to Customer any Newly Created IP (as defined below) in Deliverables upon payment in full by Customer of all amounts due for the Professional Service under which the Deliverable was created. A **"Deliverable"** is a deliverable that is identified in the applicable SOW or Service Description and that is created by Buildscafe for Customer in the performance of the Professional Services. **"Newly Created IP"** means intellectual property in any inventions or works of authorship that are made by Buildscafe specifically for Customer in the course of performing Professional Services for Customer, other than Buildscafe Core Technology. **"Buildscafe Core Technology"** means: (a) Buildscafe technology, methodologies and intellectual property (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation (both printed and electronic) existing as of the Effective Date of this Agreement or otherwise arising in whole or in part outside of work under a Professional Service for Customer; (b) features and upgrades of the Vidyad Platform and/or Vidyad Applications and/or new Vidyad Applications in development as at the Effective Date or which are part of the then current Vidyad product map and all technology, methodologies and intellectual property (including, without limitation, products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation (both printed and electronic); (c) any derivatives, improvements, enhancements or extensions of the foregoing, whether or not conceived, reduced to practice or developed during the term of this Agreement or in performance of Professional Services, as applicable; and (d) any intellectual property anywhere in the world relating to any of the foregoing. To the extent (if at all) any Buildscafe Core Technology is incorporated into a Deliverable, Buildscafe grants to Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable worldwide license to use the Buildscafe Core Technology solely to use the Deliverable in connection with the Subscription Service as contemplated under this Agreement during the Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit Buildscafe's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

3.19. **CUSTOMER CONDUCT.** Customer is responsible for, without limitation, the following: (a) Customer's implementation of the Subscription Service; (b) protecting the names and passwords of the users to the Subscription Service and preventing and notifying Buildscafe of unauthorized use of the Subscription Service; (c) in order to obtain support, having an authorized representative of the Customer contact Buildscafe support through the then current support channels (as amended by Buildscafe from time to time as set out at [www.Vidyad.com](http://www.Vidyad.com)) which may include email, phone or in-app chat, in accordance with the Subscription Service Guide attached hereto; (d) the lawfulness of, and results obtained from, all Customer Content submitted by users to the Subscription Service and each user's acts and omissions; (e) using the Subscription Service's available encryption feature for all Customer Data containing sensitive information; (f) using the Subscription Service within the permitted scope and only in accordance with the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which Customer is permitted to use the Subscription Service as set forth in the Sales Order; and (g) using the Subscription Service only in accordance with the Documentation.

#### 4. WARRANTIES

4.1. **LIMITED SUBSCRIPTION SERVICE WARRANTY.** Buildscafe warrants that during the Subscription Term the Subscription Service, will operate without a Defect (as defined in the Subscription Service Guide which is attached hereto and incorporated into this Agreement by this reference), that causes a material failure of the Subscription Service to perform in accordance with the Product Overview. Customer's exclusive remedy for breach of this warranty is for Buildscafe to correct or work around the Defect upon request, subject to and in accordance with the procedures and limitations for receiving Support, as defined in the Subscription Service Guide. If the Defect persists in causing a material failure in the Subscription Service to conform to the Product Overview without correction or work-around forty-five (45) days after written notice to Buildscafe of a warranty claim under this Section 4.1, then Customer may terminate the affected Subscription Service and Buildscafe shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination. This Section 4.1 sets forth Customer's exclusive rights and remedies (and Buildscafe's sole liability) in connection with any Defect or other failure of the Subscription Service to perform in accordance with the Product Overview or any other manner. Notwithstanding any other provision in this Agreement, Buildscafe shall have no obligation to support, and shall have no liability or obligation due to unavailability, malfunction or degradation of performance in the Subscription Service that is due to modifications of the Vidyad Applications by any person other than Buildscafe or a person acting at Buildscafe's direction.

4.2. **LIMITED PROFESSIONAL SERVICES WARRANTY.** Buildscafe warrants that the Professional Services will be performed in a competent and workmanlike manner in accordance with accepted industry standards and practices and all material requirements set forth in the Service Description or SOW, as applicable. Customer's exclusive remedy for breach of this warranty is to notify Buildscafe in writing of the breach within forty-five (45) days after performance of the non-conforming Professional Services. Upon receipt of such notice, Buildscafe, at its option, shall either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or shall terminate the affected Professional Services and refund to Customer any amounts paid for the affected Professional Services not performed. This Section 4.2 sets forth Customer's exclusive rights and remedies (and Buildscafe's sole liability) in connection with the performance of Professional Services.

4.3. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, BUILDSCAFE DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AND CONDITIONS ARISING UNDER STATUTE, WARRANTIES OF

MERCHANTABILITY, ACCURACY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUILDSCALE SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, OR DEVELOPMENT MATERIALS WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR OR THROUGH THE SERVICES, THAT THE USE OF THE SERVICES SHALL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES SHALL FUNCTION PROPERLY IN COMBINATION WITH ANY THIRD PARTY TECHNOLOGY, HARDWARE, SOFTWARE, SYSTEMS OR DATA. CUSTOMER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE. BUILDSCALE IS NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY COMMUNICATION NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS OR PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF ANY EMAIL OR PLAYERS DUE TO TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR ON THE VIDYARD PLATFORM (OR ANY PART THEREOF) OR THIRD PARTY WEBSITES OR COMBINATION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY INJURY OR DAMAGE TO USERS OR TO ANY PERSON'S COMPUTER RELATED TO OR RESULTING FROM PARTICIPATION OR DOWNLOADING MATERIALS IN CONNECTION WITH THE SERVICES OR THIRD PARTY WEBSITES. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR TAKING PRECAUTIONARY MEASURES TO PREVENT THE LOSS OR DESTRUCTION OF CUSTOMER CONTENT, SUCH AS ROUTINELY PRINTING RECORDS AND OTHER REPORTS AVAILABLE THROUGH THE SERVICES, AND VERIFYING THE RESULTS OBTAINED FROM USING THE SERVICES, AND BUILDSCALE SHALL HAVE NO OBLIGATIONS OR LIABILITY WHATSOEVER WITH RESPECT TO ANY SUCH LOSS OR DESTRUCTION, SAVE AND EXCEPT FOR RESTORING CUSTOMER'S CONTENT TO THE LATEST AVAILABLE BACK-UP THEREOF.

## 5. CONFIDENTIALITY AND NON-USE RESTRICTIONS

5.1. **CONFIDENTIAL INFORMATION.** "**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 the disclosure, including without limitation: each party's respective business plans and processes; financial and employee data; proprietary technology and product information and designs; the Subscription Service and Software; and Customer Data. The terms of this Agreement, Sales Order(s) and pricing are Confidential Information of Buildscale. Confidential Information excludes information that: (i) is or becomes generally known to the public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

5.2. **PROTECTION.** The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or contractors who are bound by written obligations of confidentiality and non-use and non-disclosure restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof, and shall reasonably cooperate with the Disclosing Party to seek confidential or other protective treatment. Each party's obligations set forth in this Section 5 shall remain in effect during the term and three (3) years after termination of this Agreement. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party. Provisions for the return of Customer Data are set forth in Section 8.3 (Return of Customer Data). Without limiting the foregoing, Customer acknowledges and agrees that certain Customer Data shall be provided to parties providing Third Party Services.

## 6. INDEMNIFICATION

6.1. **BUILDSCALE OBLIGATION.** Subject to the exclusions set forth below, Buildscale shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand ("**Claim**") alleging that Customer's use of the Subscription Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States or Canada; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. If any portion of the Subscription Service becomes the subject of a Claim, Buildscale may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in Buildscale's judgment, then (d) terminate Customer's use of the affected Subscription Service upon forty-five (45) days' written notice and pay to Customer a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the above, Buildscale shall have no indemnification obligation or liability for any Claim arising in whole or in part from: (i) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement; (ii) Customer Data; (iii) use of the Subscription Service by Customer in violation of applicable law; (iv) use of the affected Subscription Service after termination in accordance with clause (d) of this Section 6.1; (v) modifications to the Subscription Service by any person other than Buildscale or a person acting at Buildscale's direction; (vi) modifications made by or at the request of Customer pursuant to a Professional Service; or (vii) use of the Subscription Service in combination with any hardware, software, application or service made or provided other than by Buildscale.

6.2. **CUSTOMER OBLIGATION.** Customer shall defend, indemnify and hold harmless Buildscale and its suppliers, licensors, partners, and resellers and their respective officers, employees, licensors, agents, and affiliates, and all successors in interest to the foregoing, from and against any and all third party claims, damages, costs and expenses (including reasonable attorneys' fees and litigation expenses) relating to, arising out of, or in connection with Customer Content, Customer Data and/or Customer's use (which includes use by Customer's employees, agents, customers, and users) of the Subscription Service otherwise than permitted herein, including but not limited to claims relating to, arising out of, or in connection with (i) Customer's breach of any term or condition of this Agreement, (ii) infringement of any patent, copyright or trademark of a third party, (iii) Customer's violations of Applicable Laws in connection with the Services, (iv) any claims made by or on behalf of any Person pertaining directly or



indirectly to Customer's use of the Services, Customer Content or Customer Data; and/or (v) violations of Customer's obligations of privacy to any Person.

6.3. PROCESS. All of the foregoing indemnity obligations of Buildscafe and Customer are conditioned on the indemnified party notifying the indemnifying party promptly in writing of any actual or threatened Claim, the indemnified party giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, and the indemnified party cooperating and, at the indemnifying party's request and expense, assisting in such defense. SECTION 6 STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR THIRD PARTY INFRINGEMENT CLAIMS AND ACTIONS.

## 7. LIMITATIONS OF LIABILITY AND DAMAGES

7.1. LIMITATIONS OF LIABILITY. TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (1) BODILY INJURY OR DEATH; (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (3) BREACH OF PRIVACY LAWS AND (\$) CUSTOMER'S OBLIGATION TO PAY AMOUNTS OWED FOR SERVICES PROVIDED HEREUNDER.

7.2. EXCLUSION OF DAMAGES. TO THE EXTENT PERMITTED BY LAW, NEITHER BUILDSCALE NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COSTS OF SUBSTITUTE GOODS, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO: (1) BODILY INJURY OR DEATH; AND (2) INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 8. TERM AND TERMINATION

8.1. TERM AND TERMINATION. This Agreement continues until terminated under the terms of this Agreement. Each party may terminate this Agreement in its entirety either: (i) written notice to the other party given at least ninety (90) days prior to the expiry of the term of the Sales Order in respect of Subscription Services, provided that where a termination notice in respect of a Subscription Service Sales Order is not received in the manner set out above, the term of such Subscription Service shall continue on a monthly basis at a rate, as determined by Buildscafe equal to Buildscafe's then current rates or the rates set out in the Subscription Service Sales Order plus five (5%) per cent per annum. Termination of such extended Subscription Service shall require ninety (90) days prior written notice from either party; or (ii) upon written notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Either party may terminate a Subscription Service or Professional Services effective immediately upon written notice if the other party materially breaches a material obligation under this Agreement or the applicable Sales Order for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party. Professional Services are separately ordered from the Subscription Service, and are not required for the Subscription Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Sales Order.

8.2. EFFECT OF TERMINATION OF SERVICE. Upon expiration or other termination of the Subscription Service for any reason, Customer shall stop using, and Buildscafe shall stop providing, the terminated Subscription Service. (a) If the Subscription Service is terminated by Customer due to Buildscafe's breach, then Buildscafe shall refund to Customer, within thirty (30) days after the effective date of termination, all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Service after the effective date of termination. (b) If Professional Service is terminated by Customer due to Buildscafe's breach, then Buildscafe shall refund to Customer, within thirty (30) days after the effective date of termination, any prepaid amounts for unperformed Professional Service under the applicable SOW or a Service Description. (c) If the Subscription Service is terminated by Buildscafe due to Customer's breach, then Customer shall pay to Buildscafe, within thirty (30) days after the effective date of termination, fees for the terminated Subscription Service that would have been payable for the remainder of the Subscription Term after the effective date of termination. (d) Upon expiration or other termination of the Subscription Service for any reason, Customer shall be eligible to request the return of Customer Data in accordance with Section 8.3 (Return of Customer Data).

8.3. RETURN OF CUSTOMER DATA. Following the end of the Subscription Term, where Customer has not renewed, Customer shall be permitted limited access to the Services to allow Customer to extract Customer Content and Customer Data for a period of seven (7) days following termination (the "**Extraction Grace Period**"). and (e) following the Extraction Grace Period, Buildscafe shall delete all of Customer Content and Customer Data as soon as reasonably practical. Notwithstanding item (e) of this Section 8.3, Customer acknowledges and agrees that archived versions of the Services may include archived copies of Customer Content. As archived data is retained for an archive cycle, all residual copies of the data will be deleted at the end of such cycle. After such forty-five (45) day period, Buildscafe shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Subscription Service.

8.4. SURVIVAL. Upon termination of this Agreement for any reason, Customer shall pay all amounts owed hereunder. Sections 3.8, 3.11, 3.17, 5, 6, 7, 8 and 9 of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

## 9. GENERAL PROVISIONS

9.1. DEFINITIONS. Capitalized terms used in this Agreement, and not otherwise defined in this Agreement, shall have the following meanings:

(a) "Account" means the Vidyard account, which includes a username and password, used by Customer to access and use the Subscription Service including, but not limited to, making selections with respect to the presentation, management, distribution and/or end user access to Customer Content, and includes a Customer Demo Account.

(b) "Content" means any all content, data and other materials including, without limitation, audio and video materials or files, text, images, logos, artwork, graphics, pictures, advertisements, sound, documents, reports, works, works of authorship or any other intellectual property contained in any such materials.

(c) "Demo Account" means a temporary account provided to Customer by Buildscalet that permits a potential customer to use the Subscription Service on a trial basis for a limited time period, free of charge.

(d) "Overages" means the amount of fees payable (generally calculated on a per unit basis) in the event that during a billing cycle (as set out in a Sales Order) Customer exceeds the monthly limits set out in Sales Order;

(e) "Person" means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, business association, group acting in concert, or any person acting in a representative capacity.

(f) "Player" means Buildscalet's cross-platform video player which forms part of the Vidyard Platform and which controls video playback and other features.

(g) "Report" means the resulting analysis of Customer Content or for the Account that is made available to Customer through the Subscription Service.

(h) "System" means the systems including, but not limited to, third party hosting facilities, used by Buildscalet to make the Subscription Service available.

(i) "Third Party" means any Person for which Customer uses the Subscription Service to collect information on that Person's behalf or on or about that Person or their use of Customer Content.

(j) "upload" means to upload, transmit, submit, display or post.

(k) "User Data" means the data concerning the characteristics and activities of viewers and/or users of Customer Content (including personal information of such users) that is collected and analyzed by the Subscription Service.

9.2. ASSIGNMENT. Neither party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, upon notice and without the other party's consent: (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party, assign this Agreement in its entirety to such party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such party. Any attempted or purported assignment in violation of this Section 9.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

9.3. NOTICE. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the parties as set forth on the signature page of this Agreement or as otherwise agreed to by the parties in writing.

9.4. PUBLICITY. Neither Customer nor Buildscalet will issue any press releases or make public statements relating to this Agreement, or any Sales Order, or similar contract between Customer and Buildscalet nor the relationship between Customer and Buildscalet without the other party's prior written approval, which shall not be unreasonably withheld. However, Buildscalet shall be permitted to list Customer as a customer and use Customer's standard logo for Buildscalet's promotional and marketing use until the Subscription Term expires or this Agreement otherwise terminates.

9.5. FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

9.6. ENTIRETY. This Agreement, together with the referenced and/or attached documents (including Sales Orders and SOWs), is the final and entire agreement of the parties regarding the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations. In the event of





any conflict between this Agreement and any referenced and/or attached documents or SOWs, Sales Order(s), Product Overview or Subscription Service Guide, this Agreement shall govern unless such referenced and/or attached document is signed by both parties and manifests a clear intent to override the terms of this Agreement. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order submitted by Customer is for Customer's internal purposes only and its terms and conditions are superseded and replaced by this Agreement, and the purchase order terms and conditions have no force or effect. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Buildscafe which is not set out in this Agreement, the applicable Sales Order, Product Overview, Subscription Service Guide, SOW or Service Description. Customer's orders are not contingent on, and Customer has not relied on, the delivery of any future functionality regardless of any verbal or written communication about Buildscafe's future plans. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

9.7. WAIVER AND AMENDMENT. A waiver of any right is only effective if it is in writing and only against the party who signed such writing and for the circumstances given. Any modification of this Agreement, a Sales Order, the Product Overview, the Subscription Service Guide, a SOW or a Service Description must be in writing and signed by authorized representatives of both parties.

9.8. RELATIONSHIP OF THE PARTIES. The parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship. Neither party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other party. Buildscafe may at any time subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

9.9. GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION. This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province without regards to conflict of laws principles. Any action or proceeding arising from or relating to this Agreement may only be brought in the courts located in Kitchener, Ontario and each party irrevocably submits to such exclusive jurisdiction and venue. The United Nations Convention on Contracts for the International Sale of Goods (also called the Vienna Convention, and which is cited in the statutes of Canada as the *International Sales of Goods Contracts Convention Act*) will not apply to this Agreement or the transactions contemplated by this Agreement. No cause of action arising hereunder or relating hereto may be brought more than one (1) year after it first accrues. The prevailing party in an action to enforce this Agreement shall be entitled to costs of bringing the claim and reasonable attorneys' and experts' fees and expenses. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's intellectual property rights.

9.10. CONSTRUCTION. The Subscription Service and Professional Services shall be provided in the English language unless agreed otherwise. The parties confirm that they have requested that this Agreement and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et Buildscafe les documents connexes soient rédigés en anglais selon la volonté expresse des parties. Capitalized terms not defined herein shall have the meaning set forth or referenced in the Subscription Service Guide. Section headings are for convenience only and are not to be used in interpreting this Agreement.

## SUBSCRIPTION SERVICE GUIDE

Capitalized terms not defined herein shall have the meaning set forth in the Master Ordering Agreement between Customer and Buildscale.

### 1. SUPPORT

During the Subscription Term, Buildscale shall use reasonable efforts to resolve Defects (defined below) in the Subscription Service ("**Support**"). Except as described below and in only Sales Order re: "on—boarding", Support does not include: implementation services; configuration services; integration services; customization services or other custom software development; support for modifications of the Vidyad Applications by any person other than Buildscale or a person acting at Buildscale's direction; training or "how-to"; assistance with administrative functions; other professional services; corrections of immaterial Defects or corrections that will degrade the Subscription Service.

A "**Defect**" means a problem causing the Subscription Service to not conform to the Product Overview. Buildscale provides Support as set out below:

Account Tier (all amounts in USD)	Customer Success/On-boarding Plan	Support
Tier 1 (>36k Annual Contract Value (" <b>ACV</b> ")  *'growth' accounts will be determined by Buildscale's and moved to higher Tiers	Dedicated Customer Success Manager ("CSM")  Unlimited Customer Success Sessions/Demos (weekly and monthly calls as required)  30, 60, 90 day Follow Up's ("F/U's")  'Best Practice' Account reviews every 3 months  Custom on-boarding package (post-wire).  Free migration of video content from old platform  Assistance from Technical Account Manager/Developer with Calls To Action, Video Hubs, Branded Sharing pages	Tier 1 Support Priority (Queue in Service Cloud)  **In-app Support (2 hour response time Mon-Fri, 9am to 5pm Eastern Standard Time)  **24 hour response time to all requests  Phone support
Tier 2 (36k<24k ACV)	Dedicated CSM  2 hours of "on-boarding" which includes initial account setup, integration setup and testing, uploading existing content, general guidance by CSM  30 & 60 day F/U's  'Best Practice' 3, 6 & 9 month account reviews  Custom on-boarding package (post-wire)	Tier 2 Support Priority (*Accounts can request higher Tier support priority - \$\$)  **In-app Support (2 hour response time Mon-Fri, 9am to 5pm)  **24 hour response time to all requests  Phone Support
Tier 3 (24k>12k ACV)	Dedicated CSM  1 hour on-boarding  6 Month Account Review with CSM	Live Support over chat while in Vidyad application  **24 hour response time  **Phone Support
Tier 4 (<12k ACV)	No Dedicated CSM 1 hour on-boarding if requested. (Webinars/how-to videos/documentation to replace)	Live Support over chat while in Vidyad application  **48 hour response time <a href="mailto:support@vidyard.com">support@vidyard.com</a>

\*All times shall apply 24 hours a day, seven days a week and are from time the initial support contact is made.

\*\*response time

### 2. UPDATES

2.1. **INCLUDED IN SUBSCRIPTION SERVICES.** "**Updates**" are Buildscale's releases of the Subscription Service for repairs and bug-fixes (and may also include minor enhancements). Updates are applied by Buildscale to Customer's instances of the Subscription Service at no additional fee during the Subscription Term.

2.2. **NOTICE OF UPDATES; MAINTENANCE DOWNTIME.** Buildscale shall use reasonable efforts to give Customer thirty (30) days' notice of any Update to the Vidyad Applications or the Vidyad Platform. Buildscale shall use reasonable efforts to give Customer ten (10) days' notice of any Updates to the infrastructure network, hardware or software used by Buildscale to operate and deliver the Subscription Service if Buildscale in its reasonable judgment believes that the cloud infrastructure Updates will impact Customer's use of its production instances of the Subscription Service. Buildscale will use commercially reasonable efforts to limit the period of time during which the Subscription Service is unavailable due to the application of Updates to no more than **[two (2) hours per month]** ("**Maintenance Downtime**"). Notwithstanding the foregoing, Buildscale may provide



Customer with a shorter or no notice period of an Update if necessary, in the reasonable judgment of Buildscafe, to maintain the availability, security or performance of the Subscription Service for other Buildscafe customer(s) or the ability of Buildscafe to efficiently provide the Subscription Service to other Buildscafe customer(s).

2.3.

### 3. UPGRADES

3.1. UPGRADES NOT INCLUDED IN SUBSCRIPTION SERVICE. “**Upgrades**” are enhancements or new features which may from time to time become available as part of the Vidyard Platform. Buildscafe shall notify Customer where Upgrades are available and will provide pricing to Customer for the implementation of such Upgrades.

### 4. AVAILABILITY SERVICE LEVEL

4.1. SERVICE COMMITMENT. Buildscafe will make the Subscription Service available with a Monthly Uptime Percentage (defined below) of at least 99.9% during any month (the “**Service Commitment**”). In the event Buildscafe does not meet the Service Commitment, Customer will be eligible to receive a Credit as described below. Credits are calculated as a percentage of the monthly subscription charges paid by Customer pursuant to this Agreement. Buildscafe will apply the Credits directly to the balance owing from Customer. In the event no payment is due to Buildscafe from Customer, Buildscafe will issue a Credit within thirty (30) days from receipt of your e-mail advising Buildscafe of the disruption confirmation by Buildscafe that the Service Commitment has not been met. In the event that a service disruption occurs, Customer must advise Buildscafe of the service disruption and request a Credit in writing (email is sufficient). Credits may not be transferred or applied to any other account. In no event shall Buildscafe be obligated to pay Credits in the form of cash to the Customer.

Vidyard uptime percentage	Credit
99% - 99.9%	30% times (annual plan fee divided by 12)
< 99%	100% times (annual plan fee divided by 12)

4.2. EXCLUSIONS. The Service Commitment does not apply to any unavailability, suspension or termination of the Subscription Service, or any other Buildscafe performance issues: (i) that are the result of Maintenance Downtime; (ii) that result from any force majeure event or Internet access or related problems beyond the demarcation point of the Subscription Service; (iii) that result from any actions taken by Customer; (iv) that result from Customer's equipment, software or other technology and/or Customer's third party vendors' equipment, software or other technology (other than third party equipment, software or other technology within our control); or (v) arising from Customer's suspension and termination of Customer's right to use the Subscription Service due to Customer's material breach of this agreement.

### 4.3. DEFINITIONS.

“**Service disruption**” means the unavailability of video's on the Vidyard Platform.

“**Error Rate**” means the percentage obtained from dividing the total number of minutes that the Vidyard Platform was unavailable by the number of minutes in a respective month (60 times 24hrs times number of days in the respective month).

“**Monthly Uptime Percentage**” is calculated by subtracting the calculated Error Rate from 100%.

A “**Credit**” is a dollar credit that Buildscafe credits back to Customer.

**SALES ORDER**

**[See Separate Sales Order Document]**