



## END USER LICENSE AGREEMENT

Please read this End-User License Agreement ("**Agreement**") carefully before using the Services. This Agreement is a contract between you, the individual requesting use of the products, materials and/or services described below (the "**Licensee**", "**You**" and "**Your**") and Buildscale, Inc. operating as Vidyad ("**Licensor**," "**Buildscale**," "**Vidyad**," "**us**," "**we**," and "**our**") and governs your use of the Services. The license granted hereunder is conditioned upon your acceptance of the terms set forth herein.

### IMPORTANT NOTICE:

This Agreement is a legal agreement between you and the Licensor. You understand and acknowledge that the Licensor would not have entered into this agreement with you, without your agreement to be fully bound by the terms of this Agreement.

This Agreement contains disclaimers of warranties and limitations of liability. These provisions are an essential part of Licensor's bargain with you.

By using the Services, you are:

- (a) electronically signing this Agreement and such electronic signature has the same legal force and effect as a handwritten signature;
- (b) agreeing to be bound by the terms and conditions of this Agreement;
- (c) expressly agreeing that you do not have the right to receive any refund unless otherwise specifically agreed by us in writing or expressly required by operation of Applicable Law.

If you do not agree to the terms of this Agreement, do not use the Services.

## 1. GRANT OF LICENSE

1.1 **LICENSE.** If you accept this license, subject to the limitations and restrictions of this Agreement, Licensor grants you a revocable, non-exclusive, non-transferable, without the right to sublicense, limited license to use Buildscale services including the Vidyad Platform and any other services, plans, features, products, content, applications, software, maintenance and training offered by us from time to time (collectively the "**Service**") identified in one or more Buildscale sales order documents ("**Sales Order**" or "**Sales Orders**") or made available by us from time to time.

1.2 **ACCEPTANCE.** By using or visiting the Service, you accept and agree to be bound by (1) This Agreement (2) all Sales Orders which are incorporated herein by reference and (3) our Privacy Policy, found at [www.vidyard.com/privacy-policy/](http://www.vidyard.com/privacy-policy/) (the "**Privacy Policy**") which is incorporated herein by reference (collectively referred to as the "**Agreement**"). This Agreement constitutes a binding agreement between the Licensee and Buildscale. This Agreement represents the parties' entire understanding regarding the Services and shall govern over any prior oral or written agreement or discussions or different or additional terms or conditions of any purchase order, invoice or other non-Buildscale ordering document. No other terms or conditions of any purchase order, invoice or other non-Buildscale ordering document shall apply to the Services, unless agreed to in writing by both parties. Your Users may also be required to agree to be bound by the terms of this Agreement in order to access the Vidyad Platform and utilize certain parts of the Services.

## 2. OUR SERVICES

2.1 **SUBSCRIPTION SERVICE.** Unless otherwise provided in a Sales Order, Services are purchased by Licensees as subscriptions. Subject to your compliance with this Agreement, Buildscale grants you a non-transferable, non-exclusive, worldwide right to access and use the Services during the term set out in the applicable Sales Order or set out pursuant to the terms herein ("**Subscription Term**").

2.2 **BUILDSCALE ACCOUNTS.** In order to use the Service, you will have to register and create an Account with us and provide one or more names, email addresses, login usernames and passwords (each a "**Buildscale ID**"). You are responsible for maintaining the confidentiality of your Buildscale IDs. You agree not to use the Buildscale IDs, usernames or passwords of any third party or disclose your Buildscale IDs, usernames or passwords to any third party. You are responsible for any and all activity that occurs on your Account. If you suspect any unauthorized use with your Account, you must notify us immediately. You agree to provide us with correct and complete Account information at all times and inform us of any changes to the information you have provided. We will, in accordance with our Privacy Policy, keep your usernames and passwords confidential.

2.3 **USAGE LIMITS.** Services that we provide are subject to usage limits and restrictions. Each Sales Order defines specific usage limits which may include, without limitation, the locations at or through which you can use the Services, the number of allowable users, the number of allowable videos, video time limits, usage volumes and storage capacity, limits on the number of recipients and live streaming time limits. You agree to use the Services within the usage limits set out in the Sales Order. It is your responsibility to ensure that you do not exceed those limits and restrictions. Extra charges will apply if you exceed any usage limits at our then-current usage fees.



2.4 NECESSARY EQUIPMENT TO USE THE SERVICES. You are responsible for obtaining and maintaining all telecommunications, broadband, computer hardware, software, equipment and services needed to connect to, access and use the Services.

**3. FEES AND PAYMENT**

3.1 FEES. You agree to pay all fees set out in a Sales Order. All fees are non-cancellable and non-refundable, other than as set out herein, and are based on Services subscriptions purchased and not actual usage. For the avoidance of doubt, you shall not be entitled to any refund in the event of unused Services. Unless otherwise agreed between you and us, charges may be paid by wire transfer, standing order, cheque or credit card. Credit card payments will be subject to an additional 3% service fee and will be processed on the first day of each month (on a pro-rated basis if necessary).

3.2 PAYMENT TERMS. Unless otherwise set out in the Sales Order, Service fees are payable annually in advance within thirty (30) days after the date of invoice. All fees are exclusive of taxes, levies or duties imposed by taxing authorities, and Licensee shall be responsible for payment of all such taxes, levies or duties (excluding taxes based on Buildscales income), even if such amounts are not listed on a Sales Order. All fees are payable in U.S. Dollars or in such other currency as agreed to in writing by the parties without set-off or deduction.

3.3 OVERDUE CHARGES. Unpaid invoices that are not the subject of a written good faith dispute are subject to interest at a rate of 1.5% per month on the outstanding balance, or the legal maximum interest rate, whichever is lower, plus all reasonable expenses of collection, in addition to any other remedies we may have.

3.4 SUSPENSION RIGHTS. We reserve the right to immediately suspend the Services if: (i) the billing or contact information provided by you is false or fraudulent; or (ii) you fail to make any payment due within 10 business days after we have provided you with notice of such failure. Any suspension of the Services by us under this section shall not relieve you of your payment obligations under this Agreement. We will not be liable to you nor to any third party for any suspension of the Services resulting from your non-payment of fees.

**4. BUILDSCALE CONTENT AND LICENSE**

4.1 BUILDSCALE CONTENT. The Services contain Content, Documentation, and Software owned by Buildscales, its suppliers or licensors ("**Buildscale Content**"). Buildscales, its suppliers and licensors own and retain all rights, including all intellectual property rights, in and to the Services and the Buildscale Content. The Services and Buildscale Content are protected by copyright, trademark, patent, trade secret and other laws.

4.2 OWNERSHIP AND LICENSE. The Services and Buildscale Content are licensed and not sold to you. All rights not expressly granted to you in this Agreement are reserved and retained by us. You may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, use or sell any Buildscale Content or other Content (other than Licensee Content) appearing on or through the Services. You must not modify, build upon or block any portion or functionality of the Services. We grant you a limited, revocable, non-sublicensable license to reproduce and display the Buildscale Content (excluding software code) in connection with using the Services during the Subscription Term. No Service, nor any part of any Service, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without our express written consent. You may not misuse the Services. You may use the Services only as permitted by law. The licences granted by us terminate if you do not comply with this Agreement.

4.3 RESTRICTIONS. Licensee shall not (and shall not permit others to): (i) license, sub-license, sell, transfer, distribute or share the Services or Buildscale Content or make any of them available for access by third parties; (ii) create derivative works based on or otherwise modify the Services or Buildscale Content; (iii) disassemble, reverse engineer or decompile the Services or Software or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to or provided with the Services; (iv) access the Service or Buildscale Content in order to develop a competing product or service; (v) use the Service or Buildscale Content to provide a service for others; (vi) use the Vidyards Platform to operate more or different types of applications than permitted under the applicable Sales Order; (vii) remove or modify a copyright or other proprietary rights notice on or in the Services or Buildscale Content; (viii) use a computer or computer network to cause physical injury to the property of another; (ix) violate any Applicable Law; (x) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Services; (xi) intentionally include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Services; (xii) intentionally cause a computer to malfunction, regardless of how long the malfunction persists; or (xiii) alter, disable, or erase any computer data, computer programs or computer software without authorization.

4.4 FEEDBACK. If you or a Viewer send information to us, for example feedback, comments or suggestions, you grant us a perpetual, sub-licenseable, royalty-free, transferable license to use, modify and incorporate this information into our products and Services. You also agree to waive all moral rights in and to that information.

4.5 MODIFICATIONS. We are entitled to modify or update the Services from time to time in order to adapt it technically, to change menu guidances or layouts or to expand or limit functionality in a way that does not materially alter the Services.



## 5. LICENSEE CONTENT AND LICENSE

5.1 **LICENSEE CONTENT.** As a Buildscale Account holder, you and/or your Users may submit and publish Licensee Content on the Vidyard Platform. Licensee Content is the Content that you upload to the Service. Buildscale and the Service are passive conduits of the Licensee Content. You are exclusively responsible for all Licensee Content and the consequences of submitting and publishing your Content on the Service. We do not verify the accuracy, quality, content or legality of Licensee Content. We may, but are under no obligation to, monitor, view, or analyze any Licensee Content. We are not responsible for preventing or identifying infringement of intellectual property rights or non-compliance with Applicable Laws. Buildscale will not be liable, directly or indirectly, in any way for any damage or loss caused or alleged to be caused by or in connection with Licensee Content.

5.2 **RESPONSIBILITY TO OBTAIN CONSENTS.** You are responsible for obtaining all necessary consents, licenses and waivers required to create, record, submit, publish and use Licensee Content in connection with the Services. These may include consents, licenses and waivers from: (i) copyright owners, artists, actors, directors, performers, writers, producers or any other individuals appearing in Licensee Content; (ii) public performance rights collection organizations (e.g., SOCAN, ASCAP, BMI or SESAC); and (iii) the owners of musical compositions and sound recordings embodied in the Licensee Content. In addition, you are responsible to pay all applicable royalties, fees and other amounts owing to any Person in connection with the use of any Licensee Content including payments to any labor unions, guilds and public performance rights collection organizations.

5.3 **OWNERSHIP AND LICENSE.** As between you and us, you retain all rights of ownership in the Licensee Content. By uploading, displaying or publishing your Content to the Service, you grant us a worldwide, royalty-free, fully paid-up, non-exclusive, sublicensable and transferable license to use, reproduce, modify, distribute, display and perform your Content in connection with the Services. This license is necessary for Buildscale to perform the Services. For example, without the right to modify Licensee Content, we would not be able to format Content to satisfy technical requirements for optimal video playback across various platforms, devices and players. This license allows us to: (i) deliver Licensee Content in accordance with the preferences set by Licensee utilizing the Vidyard Platform; (ii) secure, encode, reproduce, host, cache, route, reformat, analyze and create algorithms and reports based on access to and use of Licensee Content; (iii) use, enhance, personalize, exhibit, broadcast, publish, publicly display, publicly perform, distribute, create derivative works of, promote, copy, store, and/or reproduce (in any form) Licensee Content on or through the Service; and (iv) utilize Licensee Content to test Buildscale's internal technologies and processes. You also grant us, and allow us to grant each Viewer or other user of the Services, a non-exclusive license to view Licensee Content through the Service. We reserve the right to retain (but not display, distribute or publish) server copies of Licensee Content that have been removed or deleted from the Services. We also reserve the right to copy, use, modify and publish a copy of any personalized videos that you may create on our website for marketing and promoting our personalized video technology.

5.4 **REPRESENTATIONS AND WARRANTIES.** You represent and warrant that: (i) you own or have the necessary licenses, rights, consents and permissions to use and publish the Content you submit; (ii) the uploading of your Content on the Service and the licenses granted to Buildscale under this Agreement do not and will not violate the rights of any Person; (iii) no payments of any kind shall be due by Buildscale to any organization for the use or distribution of Licensee Content; and (iv) if applicable, Licensee Content may be uploaded and made publicly available on YouTube or similar services, and that Licensee 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 Licensee Content has been uploaded and made publicly available.

5.5 **PROHIBITED CONTENT.** Some Content is prohibited on the Service. You agree that you will not upload or use in connection with the Service any prohibited Content including, without limitation, Content that: (i) is pornographic, sexually explicit or offensive 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; (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) promotes or incites racism, bigotry, hatred or physical harm of any kind against any group or individual; (viii) constitutes or promotes information that Licensee knows is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous; (ix) furthers or promotes criminal activity or provides instructional information about illegal activities; or (x) violates or attempts to violate the privacy rights, publicity rights, copyrights, trademark rights, contract rights or any other rights of any Person. We reserve the right to investigate and take appropriate action against anyone who, in our sole discretion, violates these provisions including removing the offending Content without prior notice, terminating or suspending Licensee's Account or access to the Service and/or reporting such Content or activities to law enforcement authorities.

5.6 **CONTENT PRESERVATION AND DISCLOSURE.** We may preserve and store Licensee Content and/or disclose Licensee 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) comply with this Agreement; (iii) respond to claims that any Licensee Content violates the rights of any Person; or (iv) protect the rights, property, or personal safety of Buildscale, Viewers and/or the public.

## 6. LICENSEE DATA AND VIEWER DATA

6.1 **LICENSEE DATA.** The Licensee Data is property of the Licensee and all rights not granted to Buildscale hereunder shall remain with Licensee. You grant us a limited, personal, non-sublicensable, non-exclusive, non-transferable, worldwide right to use Licensee Data during the Subscription Term in accordance with the terms and conditions of this Agreement. Licensee represents and warrants to Buildscale that its collection and use of the Licensee Data is and will continue to be in compliance with Applicable Laws. Except as set out in



this Agreement, we will not share any Licensee Data with any third parties unless you have given your prior consent and we shall take all reasonably appropriate confidentiality and security measures to protect such Licensee Data.

6.2 **ANALYTICS CODE.** The Services contains software ("**Analytics Code**") to track, capture and aggregate Viewer Data. Buildscale owns all rights in the Analytics Code. Nothing in this Agreement shall be deemed an assignment or transfer of Buildscale's ownership rights in the Analytics Code to Licensee. Through such Analytics Code, Buildscale may collect information about Licensee and Licensee's Viewers in order to provide the Services, prepare and analyze statistics, produce reports and improve and customize Services.

6.3 **VIEWER DATA.** Licensee owns all Viewer Data. Buildscale has the right to use the Viewer Data in accordance with and subject to the terms of this Agreement. Licensee grants to Buildscale a worldwide, non-exclusive, perpetual, royalty-free license to: (i) collect and analyze information about you and your Viewers; (ii) generate statistics and produce reports for you based on such information; and (iii) make recommendations for improving and customizing Services according to Viewer's preferences, statistics and usage activities. Except as set out in this Agreement, we will not share any Viewer Data with any third parties unless you have given your prior consent and we shall take all reasonably appropriate confidentiality and security measures to protect such Licensee Data.

6.4 **RESPONSIBILITY TO OBTAIN CONSENTS.** You are exclusively responsible for obtaining all necessary rights, releases and consents from Viewers and other third parties to allow Licensee Data and Viewer Data to be collected, used and disclosed in the manner contemplated by this Agreement and to grant Buildscale the rights set out in this Agreement. Buildscale relies on you to obtain all consents from, and provide all disclosures to, Viewers as required under Applicable Law. **STATISTICAL INFORMATION.** Buildscale may monitor Licensee and Viewers' use of the Services and the Vidyard Platform and compile Viewer Data with other data in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Services and may make such information publicly available, provided that such information does not include any data that would enable the identification of Licensee, Viewer or Viewer Data, or the disclosure of Confidential Information. Buildscale retains all rights, title and interest in and to such statistical and performance information.

## 7. PRIVACY AND SECURITY

7.1 **PRIVACY POLICY.** Our collection and use of your information and information regarding Viewers is governed by our Privacy Policy. You understand that through your use of the Services, you consent to the collection and use of this information, including the transfer of this information to Canada and/or other countries for storage, processing and use by us. As part of providing you the Services, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your Account.

7.2 **SECURITY.** The Services are provided by us from data center facilities to which Users have remote access via the internet in conjunction with certain offline components provided by us under this Agreement. We implement security procedures to help protect your Licensee Data from security attacks. However, you understand that use of the Services necessarily involves transmission of your Licensee Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of your Licensee Data lost, altered, intercepted, copied or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of your Licensee Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers. If you become aware of any security breach in the Services, you agree to promptly notify us. We agree to notify you in the event of a detected security breach. All data at rest is encrypted and all data is encrypted in transit.

7.3 **NETWORKS.** Technical processing and transmission of the Service, including Licensee Content, may involve: (i) transmissions over various networks; and/or (ii) changes to conform and adapt to technical requirements of connecting networks or devices. Use of or connection to the internet provides the opportunity for unauthorized Persons to circumvent security precautions and illegally gain access to the Service, the Licensee Data, the Viewer Data or the Licensee Content. We do not guarantee the privacy, security or authenticity of any content, data or information transmitted over or stored in any system connected to the internet.

7.4 **MAINTENANCE AND REPAIRS.** We use commercially reasonable efforts to ensure that availability of the Services will be uninterrupted and that transmissions will be error-free. However, due to the nature of the internet, this cannot be guaranteed. Also, your access to Services may be occasionally suspended or restricted to allow for repairs, maintenance or the introduction of new facilities or services. We will attempt to limit the frequency and duration of any such suspension or restriction, and we will use commercially reasonable efforts to alert or notify you in the event of any scheduled or non-scheduled suspension of Services. Due to the nature of technical outages, we cannot guarantee notice prior to unplanned outages. We will not be held responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control.

## 8. SUBCONTRACTORS

8.1 We may use third party subcontractors to provide limited parts of the Services from time to time, including data storage and processing and content delivery ("**Subcontractors**"). You consent to us subcontracting these services to the Subcontractors, provided that Buildscale shall ensure that these Subcontractors comply with the terms of this Agreement applicable to Buildscale.



## 9. THIRD PARTY SERVICES

9.1 **THIRD PARTY SERVICES.** The Services contain features or functionality designed to interact and/or integrate with software, applications or services that are provided by a Person other than Buildscale (“**Third Party Services**”). For the avoidance of doubt, Third Party Services exclude services whereby Buildscale has subcontracted its responsibilities hereunder. To use these features, you may be required to obtain access to such Third Party Services from their providers, pay fees to the provider of such Third Party Services and/or agree to separate license agreements or terms with those providers. In order to use the Services, you may be required to grant us access to your Accounts to such Third Party Services. You expressly permit us to share Licensee Content in conjunction with the Third Party Services and Licensee Data with Third Party Service providers. The Third Party Services may import or export data related to your Account, activity and/or content and otherwise gather data from you and your Viewers. If applicable and unless otherwise noted on a Sales Order, a data integration with Salesforce.com results in a cost of \$10.00 USD per user per month and a Chatter integration with Salesforce.com results in a cost of \$2.00 USD per user per month. These amounts are included in the prices listed on the Sales Order. No additional fees will be charged beyond those listed on the sales order for Salesforce.com related integrations. In order for the Salesforce.com integration to operate accordingly, you must also provide us with your Salesforce.com OrgID.

9.2 **RESPONSIBILITY.** We are not responsible for any Third Party Services or for any act or omission of any third party. Buildscale does not own, operate or endorse any Third Party Services and does not warrant any Third Party Services. You agree to assume all risks and liabilities associated with the use of any Third Party Services. Third Party Services are operated independently of us and we do not guarantee the availability of any Third Party Services. If the provider of any such Third Party Services ceases to make the Third Party Services available for interoperation with Services, Buildscale may cease providing such features or functionality without entitling Licensee to any refund, credit or other compensation. You agree to use the Services only in compliance with the terms and conditions associated with any Third Party Services. We advise you to check the terms of use and privacy policies for all Third Party Services to ensure compliance and determine how they may use your information.

9.3 **ACCESS TO DATA BY THIRD PARTIES.** If you use Third Party Services, your data may be transmitted outside of the Buildscale system and the provider of the Third Party Services may be able to obtain access to your Licensee Data in Buildscale’s systems through the Buildscale application programming interface. This may result in the disclosure, modification or deletion of your Licensee Data by the Third Party Service provider. The Third Party Service provider and its agents may collect and use data pertaining to your configuration and use of the Third Party Service. We are not responsible for any transmission, collection, disclosure, modification, use or deletion of your Licensee Data, as described in this section, by or through Third Party Services or their providers or any of its agents and partners.

## 10. REPRESENTATIONS AND WARRANTIES

10.1 **WARRANTY.** Buildscale warrants that during the Subscription Term the Services will operate without a material failure of the Service to perform in accordance with the Product Overview (a “**Defect**”). Licensee’s exclusive remedy for breach of this warranty is for Buildscale to correct or work around the Defect upon request, subject to and in accordance with Buildscale’s procedures and limitations regarding support. If the Defect persists in causing a material failure in the Service to conform to the Product Overview without correction or work-around forty-five (45) days after written notice to Buildscale of a warranty claim under this Section 10.1, then Licensee may terminate the affected Service and Buildscale shall refund to Licensee any prepaid subscription fees covering the remainder of the Subscription Term of the affected Service after the date of termination. This Section 10.1 sets forth Licensee’s exclusive rights and remedies (and Buildscale’s sole liability) in connection with any Defect or other failure of the Service to perform in accordance with the Product Overview or any other manner.

10.2 **DISCLAIMER OF WARRANTIES.** Except for the warranties expressly stated in this Agreement, to the maximum extent allowed by Applicable Law, Buildscale disclaims all warranties of any kind, express or implied, including warranties and conditions arising under statute, warranties of merchantability, non-infringement or fitness for a particular purpose.

## 11. INDEMNIFICATION

11.1 **BY BUILDSCALE.** We will indemnify, defend and hold harmless Licensee from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys’ fees) arising out of any claim by a third party against the Licensee to the extent based on an allegation that Buildscale’s technology used to provide the Services to the Licensee infringes or misappropriates any copyright, trade secret, patent or trademark right of a third party that is issued or registered in Canada or the United States. In no event will we have any obligations or liability under this section arising in whole or in part from any content, information or data provided by Licensee, Viewer or other third parties. Buildscale shall not be required to indemnify Licensee in the event of: (a) modification of the Services by Licensee, its employees, or contractors in conflict with Licensee’s obligations or as a result of any prohibited activity as set forth herein; (b) use of the Services in a manner inconsistent with the Documentation; (c) use of the Services in combination with any other application, product, or service not provided by Buildscale if such claim would not have occurred without such combination; or (d) use of the Services in a manner not otherwise contemplated by this Agreement.

11.2 **LICENSEE INDEMNIFICATION.** Licensee shall indemnify, defend and hold harmless Buildscale from and against all liabilities, damages and costs (including settlement costs and reasonable attorneys’ fees) arising out of any claim by a third party against Buildscale or its affiliates regarding: (i) Licensee Content, Licensee Data or Viewer Data; (ii) failure by the Licensee to obtain any of the



necessary consents required by Viewers under this Agreement; (iii) Licensee's use of the Services in violation of this Agreement; and/or (vi) violations of Licensee's obligations of privacy to any Person.

11.3 **POSSIBLE INFRINGEMENT.** If we believe the Services infringe or may be alleged to infringe a third party's intellectual property rights, then we may: (i) obtain the right for you (at our expense) to continue using the Service; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If we do not believe that the options described in this section are commercially reasonable, then we may suspend or terminate Licensee's use of the affected Services (with a pro-rata refund of prepaid fees for the Services).

11.4 **PROCESS.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed; and (ii) the other party may join the defense with its own counsel at its expense.

11.5 **EXCLUSIVE REMEDY.** The indemnities above are Buildscale's and Licensee's only remedy under this Agreement for third party infringement claims and actions.

## 12. LIMITATIONS OF LIABILITY AND DAMAGES

12.1 **LIMITATIONS OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY LICENSEE FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO: (I) EITHER PARTY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS; (II) BREACH OF PRIVACY LAWS AND (III) LICENSEE'S OBLIGATION TO PAY AMOUNTS OWED FOR SERVICES.

12.2 **EXCLUSION OF DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER THE LICENSEE NOR BUILDSCALE SHALL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUE OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE FORESEEABLE. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO EITHER PARTY'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS.

## 13. CONFIDENTIAL INFORMATION

13.1 **CONFIDENTIAL INFORMATION.** Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose information relating to the Disclosing Party's business (together "**Confidential Information**" of the Disclosing Party). Such information includes, without limitation, information relating to pricing of Services, Licensee Data and your Buildscale ID. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information; and (ii) not to use (except as permitted in this Agreement) or divulge to any third person such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to Confidential Information after five years following the termination of this Agreement or any Confidential Information that the Receiving Party can demonstrate 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; (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or (v) is required by law. 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.

## 14. TERM AND TERMINATION

14.1 **TERM.** This Agreement shall commence on the date set out in the first Sales Order and shall remain in effect through the end of the Subscription Term in any current Sales Order, unless terminated earlier pursuant to the terms of this Agreement (the "**Initial Term**"). Your subscription will automatically renew at the end of the Initial Term for an additional 12-month term and shall continue to renew for successive 12-month terms thereafter (each a "**Renewal Term**") unless you provide us with written notice of your intent not to renew at least ninety (90) days before the expiration of the Initial Term or the Renewal Term. You must cancel the Services at least ninety (90) days prior to the expiration of the Initial Term or Renewal Term in order to avoid being billed for a (further) Renewal Term. Payment for Services for the Renewal Term is due on the first day of the Renewal Term and will automatically be charged to the account that you used for the original subscription. The renewal price will be the same price as for the prior 12-month subscription term unless we give you advance notice of a price change.

14.2 **TERMINATION.** Either party may terminate this Agreement effective immediately upon written notice: (i) if the other party materially breaches a material obligation under this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party; or (ii) 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.

14.3 **EFFECT OF TERMINATION.** Upon expiration or other termination of the Service for any reason, your right to access and use the Service shall terminate. If you terminate this Agreement or any Sales Order solely due to a material breach of this Agreement by us, we agree to refund all prepaid fees for the remaining portion of the Subscription Term for the terminated Service within thirty days after the date of termination. If we terminate this Agreement or any Sales Order for your material breach, all fees set out on such Sales Order shall be immediately due and payable.

14.4 **RETURN OF LICENSEE DATA.** At the end of the Subscription Term, you will be entitled to extract Licensee Content stored using the Services, Licensee Data and Non-Anonymized Viewer Data for a period of seven (7) days following termination (the "**Extraction Grace Period**"). Following the Extraction Grace Period, Buildscale shall have the right to delete all of Licensee Content, Licensee Data and Non-Anonymized Viewer Data at any time and cancel your Account with us. You acknowledge and agree that archived versions of the Services may include archived copies of Licensee Content, Licensee Data and Non-Anonymized Viewer Data which may be retained by us for an archive cycle.

14.5 **SURVIVAL.** Upon termination of this Agreement for any reason, Licensee shall pay all amounts owed hereunder. Sections 3.3, 4.1, 4.4, 6.2, **Error! Reference source not found., Error! Reference source not found.,** 10, 11, 12, 13, 14 and 15 of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

## 15. GENERAL PROVISIONS

15.1 **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 Licensee to access and use the Service and includes a Licensee Demo Account;

(b) "Applicable Laws" means all statutes, codes, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which such word is used;

(c) "Content" means any and all content, data and other materials including, without limitation, videos, music, sounds, images, live streams, documentation, reports, materials, files, text, images, logos, artwork, graphics, pictures, advertisements, works, works of authorship or any other intellectual property contained in any such materials;

(d) "Licensee Data" means non-anonymized electronic data pertaining to Licensee, the Users and the Viewers that is collected and/or processed using the Service, including personal information, login credentials, and other information that relates to such parties' use of the Service;

(e) "Demo Account" means a temporary account provided to Licensee by Buildscale that permits a potential Licensee to use the Service on a trial basis for a limited time period, free of charge;

(f) "Documentation" means documentation relating to the operation and use of the Services that are provided by Buildscale to Licensee under this Agreement, as updated by Buildscale from time to time;

(g) "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.

(h) "Product Overview" means the overview of the Services to be provided to a Licensee set out in the Sales Order.

(i) "Software" means software products used in connection with the Service, like an embed code for Vidyard's embedded video player, and may include code that is licensed under third party license agreements, including open source, made available or provided with the Software, as applicable;

(j) "Users" means Licensee's employees, representatives, consultants, contractors or agents who are authorized to use the Services for Licensee's benefit and have unique user identifications and passwords for the Services;

(k) "Vidyard Platform" means the code, technology and servers used in the operation and provision of the Services and includes the Documentation and Software;

(l) “Viewers” means viewers that use or view the Licensee Content;

(m) “Viewer Data” means the electronic data concerning the characteristics and activities of Viewers (including personal information of such Viewers) collected and analyzed by the Service relating to such Viewers use or viewing of the Licensee Content.

15.2 **ASSIGNMENT.** You may not assign this Agreement, nor any of the rights or obligations arising thereof, in whole or in part, to any third party without our prior written consent. We may assign this Agreement, as well as any of our obligations or rights, to a successor entity resulting from a merger, acquisition or consolidation involving Buildscafe.

15.3 **CONFLICT.** In the event of any conflict between this Agreement and a Sales Order, the terms of the Sales Order shall govern.

15.4 **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 an internationally 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 the Sales Order or as otherwise agreed to by the parties in writing.

15.5 **PUBLICITY.** You permit us to list you as a customer and use your standard logo for our promotional and marketing use during the Subscription Term.

15.6 **FORCE MAJEURE.** Except for your obligation to pay fees for the Services, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include, without limitation, accidents, acts of God, labour disputes, actions of any government agency, shortage of materials, acts of terrorism or the stability or availability of the Internet or a portion of it.

15.7 **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 must be in writing and signed by both parties.

15.8 **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.

15.9 **GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION.** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in that Province. 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 two (2) years after it first accrues.

15.10 **EXECUTION.** This Agreement may be executed and delivered electronically or by facsimile and the parties agree that such electronic or facsimile execution and delivery will have the same force and effect as delivery of an original document with original signatures, and that each party may use such electronic or facsimile signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.