

## **SERVICE AGREEMENT**

**This Agreement for AppBuilder.cloud Cloud Services ("Agreement") contains the terms and conditions that govern your access to and use of the Services (as defined below). The Effective Date is the date/time you click an "I accept" button or check box presented with these. As used herein, "you", "your" or "Customer" shall refer to the entity identified on the Contact Information section of the Website. In consideration of the mutual promises contained in this Agreement, AppBuilder.cloud, Inc. and Customer hereby agree as follows:**

### **1. The Services.**

1.1 The services covered by this Agreement are the AppBuilder.cloud Cloud services provided by AppBuilder.cloud to Customer from time to time (collectively, "Services") and included on <http://www.appbuilder.cloud> (the "Website") and the Fees section of the Website.

1.4 Customer may access the Services via the AppBuilder.cloud website or the provided Application Programming Interface ("API"). The website or the APIs may be modified at any time, or may transition to new APIs at any time. Customer's use of the website and/or APIs are governed by this Agreement.

### **2. Term and Termination.**

2.1 The term of this Agreement will commence on the Effective Date and will remain in effect for so long as Customer continues to access and use the Services. Customer may terminate the Service for any reason or no reason without liability or early termination charges upon notice to AppBuilder.cloud.

2.2 Either party may terminate the Agreement or affected Services (i) upon thirty (30) days prior written notice in the event of a material, uncured breach of the Agreement (unless a different notice period is expressly set forth in the Agreement); or (ii) in accordance with any other express term contained in the Agreement. AppBuilder.cloud may suspend the affected Service: (a) upon five (5) days' notice in the event of any uncured payment default or if any payment mechanism Customer has provided to AppBuilder.cloud is invalid or charges are refused for such payment mechanisms, and Customer fails to cure such payment obligation default or correct such payment mechanism problem within such 5-day period; or (b) upon notice in the event Customer violates the AUP, Section 5 (Authorization and License to Use the Services) or Section 10.1 (the foregoing waiting period may whenever practical or feasible under the circumstances be twenty-four (24) hours following notice to Customer).

### **3. Effect of Termination.**

3.1 Upon termination of this Agreement for any reason: (i) Customer remains liable for all fees, charges and any other obligations Customer has incurred through the date of

termination with respect to the Services; and (ii) except as set forth in the paragraph below, all of Customer's rights under this Agreement shall immediately terminate.

3.2 Notwithstanding any notice of termination or discontinuance of use of the Cloud Services by Customer, AppBuilder.cloud will not deem any notice of termination effective and all applicable fees/charges will continue to apply until Customer removes and/or deletes any and all Cloud Content. If, after a thirty (30) day notice and cure period Cloud Content is not deleted and/or removed, AppBuilder.cloud reserves the right to delete any and all Cloud Content without further obligation or liability to Customer.

3.3 Provided this Agreement is not terminated by AppBuilder.cloud for cause, Customer may request and AppBuilder.cloud may, upon payment by Customer of all applicable recurring monthly, transition and storage fees, provide post-termination data retrieval and/or transition assistance for a period of up to ninety (90) days ("Transition Assistance") so long as the request by Customer for Transition Assistance is made prior to the actual termination or expiration date of this Agreement. Transition Assistance may include, by way of example, transferring Data, Confidential Information and related information and materials to either Customer or its third party designee at Customer's expense.

3.4 Except as provided in Section 3.2 above, AppBuilder.cloud shall have no obligation to continue to store Data after termination or to permit Customer to retrieve same.

#### **4. Data Preservation.**

In the event of a suspension by AppBuilder.cloud of Customer's access to Services for any reason, during the period of suspension (i) AppBuilder.cloud will not take any action to intentionally erase any Customer data that is stored, processed or transmitted through Customer's use of the Services or Customer software (collectively, "Data"), and (ii) applicable charges, including Service Data storage charges, if any, will continue to accrue.

#### **5. Authorization and License to Use the Services.**

5.1 Customer will not nor will Customer allow any third party to (i) copy, modify, adapt, translate or otherwise create derivative works of the Services; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Services; (iii) knowingly use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services; (iv) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Services for any purpose without the express written consent of AppBuilder.cloud; or (v) remove, obscure, or alter any notice or label of copyright, trademark, or other proprietary right appearing in or on any item included with the Services; provided however, this limitation does not prohibit Customer from adding its own URL, logo or entity name.

5.2 Hardware/Software. If the Service includes access to or the use of hardware or software provided by AppBuilder.cloud or its licensors ("AppBuilder.cloud Assets"), Customer: (a) will not assert any ownership interest whatsoever in the AppBuilder.cloud Assets; (b) will keep the AppBuilder.cloud Assets free and clear from all liens, claims and encumbrances; (c) shall use all AppBuilder.cloud Assets in accordance with the Agreement; and (d) comply with any applicable third party licensing terms or conditions and use of any such AppBuilder.cloud Assets shall be deemed Customer's acceptance of such terms. Unless Managed Operating System or Managed Application services are purchased, Customer is responsible for selecting, installing and maintaining any software used in connection with the Service including any related applications, systems, or software.

## **6. Service Levels; Credits.**

6.1 AppBuilder.cloud's SLA constitutes Customer's sole and exclusive remedy for AppBuilder.cloud's provision of or failure or deficiency of the Services for any reason, except that AppBuilder.cloud shall have no obligation to compensate Customer under any SLA while Customer is in default or not current in its payment obligations under this Agreement.

6.2 Service credits, if any, as provided in the SLA or any other credits Customer may be eligible to receive for Services purchased pursuant to a valid promotion will be issued to Customer's account and shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. Credits shall expire if Customer's account is terminated.

## **7. Security.**

7.1 Customer will ensure that all Content stored or transmitted via the Service complies with all applicable laws and reasonable information security practices, including without limitation those relating to the encryption of data. Customer is solely responsible for properly configuring and using the Cloud Service and taking its own steps to maintain appropriate security, protection and backup of Cloud Content and to protect Cloud Content from unauthorized access and routine archiving of Cloud Content. Given that Customer can self-provision and self-configure the Services and the Customer environment in ways that may reduce their security, Customer acknowledges that it and not AppBuilder.cloud will be responsible for whether the Services and Customer environment are configured in a secure manner. In addition, Customer is solely responsible for compliance related to the manner in which the Cloud Service is used or accessed by Customer or its End Users.

7.2 AppBuilder.cloud has adopted and implemented, and shall maintain, a corporate information security program designed to comply with applicable laws and protect Content from loss, misuse and unauthorized access or disclosure. Such program includes annual employee security awareness training and formal information security policies

and/or procedures. The AppBuilder.cloud information security program is subject to reasonable changes by AppBuilder.cloud from time to time.

## **8. Fees and Payment.**

8.1 In consideration of Customer's use of any of the Services, Customer agrees to pay applicable fees for Services in the amounts set forth on the Fees tab of the website. Fees for any new Service or new Service feature may be added to the Fees section at any time, however, fees for new Services or Service features aren't effective until purchased by Customer. AppBuilder.cloud may materially increase fees for any existing individual Service or remove any material service offering by providing not less than sixty (60) days' notice prior to the effective date of such increase by posting on the Website. Customer shall pay all duties and taxes charged in connection with all transactions and Services under the Agreement, including penalties and interest, but specifically excluding taxes based on AppBuilder.cloud's assets or net income. When AppBuilder.cloud has the legal obligation to pay or collect taxes, the appropriate amount shall be charged to and paid by Customer unless Customer provides AppBuilder.cloud with a valid tax exemption certificate authorized by the appropriate taxing authority.

8.2 The billing commencement date ("BCD") for recurring Services is the date in which AppBuilder.cloud delivers the Services; and (ii) the BCD for usage based Services is the time/date Services are activated. Payment obligations are non-cancelable and fees paid are non-refundable. AppBuilder.cloud shall be entitled to claim interest on any overdue amount (where not disputed in good faith) at the rate of 1 1/2% per month. All amounts payable by Customer under this Agreement will be made without setoff or counterclaim and without deduction or withholding.

8.3 Customer agrees not to chargeback any credit card payments for services rendered. A chargeback of payment for services rendered will result in an additional charge of US \$150 and will be subject to collection by an authorized collection agency. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by AppBuilder.cloud in enforcing collection.

## **9. Proprietary Rights.**

9.1 The Services, including all intellectual property rights in the Services, are and shall remain, the property of AppBuilder.cloud. All rights in and to the Services not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by AppBuilder.cloud and its licensors without restriction. AppBuilder.cloud grants Customer a limited, revocable, non-exclusive, non-sublicenseable, non-transferable and limited right to access and use the Cloud Services solely in accordance with the Agreement and any software (including related documentation) that may be provided by AppBuilder.cloud or its third party licensors is neither sold nor distributed to Customer and may be used solely as part of the Cloud Services.

9.2 As between AppBuilder.cloud and Customer, Customer exclusively owns all right, title and interest in and to Data. AppBuilder.cloud will not disclose, modify, or access Data, except (i) if Customer expressly authorizes AppBuilder.cloud to do so in connection with Customer's use of the Services, including requests for support; or (ii) as necessary to provide the Services to Customer or to prevent or address service or technical problems, or to comply with the Agreement or the request of a governmental or regulatory body, subpoenas or court orders.

9.3 For the purposes of this Agreement, "Confidential Information" means all non-public information of the parties hereto relating to their business activities, financial affairs, technology, marketing or sales plans that is exchanged by the parties in the formation and implementation of the Agreement, including without limitation any and all present or future product or service information, technical or financial information, business strategies, practices, procedures, details of any contracts entered into by the parties, advertising and promotional ideas or material, other business information, technical information, documents, drawings, models, inventions, copyrightable works, or oral disclosures, and all copies thereof, that is exchanged by the parties.

9.4 Each party will maintain the secret and confidential nature of the Confidential Information it receives and will restrict the possession, knowledge and use of Confidential Information to its employees, end users and contractors who (i) have a need to know Confidential Information in connection with AppBuilder.cloud's provision of the Services, (ii) are informed of the confidential nature of the information, and (iii) have executed written nondisclosure agreements obligating them to protect the Confidential Information, and will not disclose such Confidential Information to third parties. Each party will, at a minimum, use the same degree of care that it uses with respect to its own Confidential Information to prevent its use or disclosure, but in no event will Recipient use less than reasonable care. Recipient may use the Confidential Information it receives only for the furtherance of the purposes of this Agreement and the Services and as expressly permitted by this Agreement.

9.5 Exclusions. Confidential Information does not include the following categories of information: (a) information that at the time of disclosure to Recipient was in the public domain (other than as a result of any breach of this Agreement); (b) information that was lawfully known by Recipient prior to receipt from Discloser (as proven by Recipient's written records); (c) information that, after disclosure to Recipient, becomes known to the general public through no breach of this Agreement by Recipient; (d) information developed independently by Recipient without use of or reference to Confidential Information; or (e) information that is disclosed to Recipient by a third party who did not acquire or disclose such information by a wrongful act.

9.6 In the event Customer elects, in connection with any of the Services, to communicate to AppBuilder.cloud suggestions for improvements to the Services ("Feedback"), AppBuilder.cloud shall own all right, title, and interest in and to the same, even if Customer has designated the Feedback as confidential, and AppBuilder.cloud shall be entitled to use the Feedback without restriction. Customer hereby irrevocably assigns all

right, title, and interest in and to the Feedback to AppBuilder.cloud and agrees to provide AppBuilder.cloud such assistance as it may require to document, perfect and maintain AppBuilder.cloud's rights to the Feedback.

9.7 If Customer elects to use Customer provided and/or licensed software in connection with the Cloud Services or make such software available to other users of Cloud Services, Customer is solely responsible for (i) selecting, licensing, installing and maintaining any such software, including any related applications and systems; and (ii) ensuring adherence to current technical documentation, all applicable licensing terms, requirements and/or restrictions and all applicable laws with respect to such software.

## **10. Representations; Disclaimer of Warranties.**

10.1 Customer represents and warrants that Customer and its end users will not use the Services: (i) in any manner that constitutes or facilitates the illegal export of any controlled or otherwise restricted items, including, without limitation, software, or other data that is subject to export laws; and/or (ii) in a manner that materially interferes with or harms the AppBuilder.cloud infrastructure or any third parties.

10.2 Customer further represents and warrants that: (i) the information Customer provides in connection with Customer's registration for the Services is accurate and complete; (ii) if Customer is registering for the Services as an individual, that Customer is at least 18 years of age and has the legal capacity to enter into this Agreement; and (iii) if Customer is registering for the Services as an entity or organization, (a) Customer is duly authorized to do business in the country or countries where Customer operates and is an authorized representative of Customer's entity, and (b) Customer's employees, officers, representatives and other agents accessing the Services are duly authorized to access the Services and to legally bind Customer to this Agreement and all transactions conducted under Customer's account.

10.3 Warranty Disclaimers. TO THE MAXIMUM EXTENT PERMITTED BY LAW, APPBUILDER.CLOUD AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, APPBUILDER.CLOUD AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE OFFERINGS IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY RESULTING DAMAGE TO CUSTOMER'S PROPERTY OR LOSS OF DATA.

## **11. Limitation of Liability.**

THE CREDITS DESCRIBED IN THE SLA ARE CUSTOMER'S SOLE REMEDIES FOR ANY FAILURE OR DEFICIENCY OF THE SERVICE. APPBUILDER.CLOUD SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES (EVEN IF APPBUILDER.CLOUD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SERVICES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; AND/OR (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER'S DATA. APPBUILDER.CLOUD'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO APPBUILDER.CLOUD HEREUNDER FOR THE SERVICES DURING THE SIX (6) MONTH PERIOD PRECEDING THE CLAIM.

## **12. Indemnification.**

Customer agrees to indemnify and hold harmless AppBuilder.cloud, its affiliates, officers, directors, attorneys, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to Customer's non-compliance with Section 5, 10.1, 10.2, or the AUP.

13. No Third Party Beneficiaries. Customer agrees that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to the Agreement.
14. Notice. Except as otherwise provided in this Agreement, each party may provide notices required under this Agreement by email or by mail to the address listed on the cover sheet hereto for the other party.
15. Force Majeure. AppBuilder.cloud is not responsible for delays or failures to perform its responsibilities under this Agreement due to causes beyond its reasonable control, including, but not limited to, acts of God, governmental actions, fires, explosions, labor disputes, war, pandemic, terrorism, riots, inability to obtain energy (each, a "Force Majeure"), provided, that the non-performing party promptly furnishes Notice to the other party and resumes performance as soon as practicable. AppBuilder.cloud will take all reasonable steps to remove the causes of non-performance and resume performance as soon as the causes are removed.
16. General. This Agreement constitutes the entire agreement between Customer and AppBuilder.cloud regarding the subject matter hereof and supersedes any and all prior or contemporaneous representation, agreement, or communication between AppBuilder.cloud and Customer, whether written or oral, regarding such subject matter.

If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. This Agreement shall be governed by and construed under the laws of the state of Missouri without reference to its conflict of law principles. In the event of any conflicts between foreign law and Missouri law, Missouri law shall prevail and govern. Notwithstanding anything to the contrary, AppBuilder.cloud may seek injunctive relief or other relief in any court of competent jurisdiction for any actual or alleged infringement of AppBuilder.cloud's or any third party's intellectual property and/or proprietary rights. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. A waiver of any default is not a waiver of any subsequent default. Customer may not assign or otherwise transfer any of Customer's rights hereunder without AppBuilder.cloud's prior written consent, and any such attempt is void. The relationship between AppBuilder.cloud and Customer is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Digital signatures will be considered binding for all purposes.