BUILDFitters Agreement

This "BUILDFitters Licensing Agreement" is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("Customer"), and AlphaBOLD, Inc. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that you or your reseller provisions your BUILDFitters Subscription. Key terms are defined in Section 10.

1.   Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

a. Software. Upon acceptance of each order, AlphaBOLD grants Customer a limited right to use the Software in the quantities ordered.

(i) Use Rights. The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes AlphaBOLD makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

(ii) Temporary and perpetual licenses. Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full or if otherwise speicifed in the contract.

b. Online Services. Customer may use the Online Services as provided in this agreement.

(i) Online Services Terms. The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

(ii) Suspension. AlphaBOLD may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. AlphaBOLD will give Customer notice before suspending an Online Service when reasonable.

(iii) End Users. Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

(iv) Customer Data. Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for AlphaBOLD to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating AlphaBOLD to Customer or to any third party. AlphaBOLD does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

(v) Responsibility for your accounts. Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use

of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.

c. **License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Attempted license transfers that do not comply with this agreement are void.

d. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. AlphaBOLD reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement AlphaBOLD patents or other AlphaBOLD intellectual property in the device itself or in any other software or devices.

e. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-AlphaBOLD software or technology in any way that would subject AlphaBOLD's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

f. **Preview releases.** AlphaBOLD may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. AlphaBOLD may change or discontinue Previews at any time without notice. AlphaBOLD also may choose not to release a Preview into "General Availability."

g. **Verifying compliance for Products.**

   (i) Right to verify compliance. Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. AlphaBOLD has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by AlphaBOLD in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete AlphaBOLD's self-audit process, which AlphaBOLD may request as an alternative to a third party audit.

   (ii) Remedies for non-compliance. If verification or self-audit reveals any unlicensed use of Products, then within 30 days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse AlphaBOLD for the costs AlphaBOLD incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, AlphaBOLD will

not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, AlphaBOLD does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

(iii) Verification process. AlphaBOLD will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer

and its Affiliates use or distribute. AlphaBOLD will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

2.   Subscriptions, ordering.

a. Choosing a Reseller. Customer may choose and maintain a Reseller authorized within its region. If AlphaBOLD or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from AlphaBOLD, which may require Customer to accept different terms.

b. Available Subscription offers. The Subscription offers available to Customer will be established by its Reseller or AlphaBOLD and generally can be categorized as one or a combination of the following:

(i) Online Services Commitment Offering. Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

(ii) Consumption Offering (also called Pay-As-You-Go). Customer pays based on actual usage with no upfront commitment.

(iii) Limited Offering. Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another AlphaBOLD offering (for example, Demo Run). Provisions in this agreement with respect to the SLA and data retention may not apply.

(iv) Software Commitment Offering. Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

c. Ordering.

(i) Orders must be placed by Customer or through Customer's designated Reseller. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

(ii) Customer's Reseller may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

d. Pricing and payment. Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller or AlphaBOLD depending on who Customer decides to order licenses from.

e. Renewal.

(i) Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.

(ii) Customer's Subscription will automatically renew unless Customer provides AlphaBOLD or its Reseller with notice of its intent not to renew prior to the expiration of the Term.

f. Taxes. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

3. Term, termination.

a. Agreement term and termination. This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting AlphaBOLD or its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.

b. Termination for cause. If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.

c. Cancel a Subscription. AlphaBOLD or Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

4. Security, privacy, and data protection.

a. AlphaBOLD and Reseller Administrator Access and Customer Data. Customer acknowledges and agrees that (i) once Customer has chosen a Reseller or AlphaBOLD for licenses, that AlphaBOLD or Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from AlphaBOLD or its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from AlphaBOLD's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to AlphaBOLD providing Reseller with Customer Data and information that Customer provides to AlphaBOLD for purposes of ordering, provisioning and administering the Online Services.

b. Customer consents to the processing of personal information by AlphaBOLD and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to AlphaBOLD on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to AlphaBOLD.

c. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by AlphaBOLD, Reseller or as required by law, and Customer shall obtain the users' consent to the same.

d. Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to AlphaBOLD for purposes of this Section 4.

5. Defense of third party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

> **a. By AlphaBOLD.** AlphaBOLD will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by AlphaBOLD for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by AlphaBOLD and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If AlphaBOLD is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. AlphaBOLD will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.
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> **b. By Customer.** To the extent permitted by applicable law, Customer will defend AlphaBOLD against any third-party claim to the extent it alleges that: (1) any Customer Data or nonAlphaBOLD software hosted in an Online Service by AlphaBOLD on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Fix, alone or in combination with anything else, violates the law or harms a third party.

6. Limitation of liability.

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

> **a. Online Services.** For Online Services, AlphaBOLD's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 3 months before the incident; provided that in no event will AlphaBOLD's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
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> **b. Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to AlphaBOLD, AlphaBOLD's liability is limited to direct damages finally awarded up to US$1,000.
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> **c. Exclusions. In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.**
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> **d. Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 5; or (2) violation of the other's intellectual property rights.

7. Support and Professional Services.

Customer's Reseller or AlphaBOLD will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be AlphaBOLD. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

8. Miscellaneous.

a. Notices. You must send notices by mail, return receipt requested, to the address below.

Notices should be sent to:
AlphaBOLD Inc 2011 Palomar Airport Rd, Suite 305, Carlsbad, CA 92011 UNITED STATES

You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

b. Assignment. You may not assign this agreement either in whole or in part. AlphaBOLD may transfer this agreement without your consent, but only to one of AlphaBOLD's Affiliates. Any prohibited assignment is void.

c. Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

e. No agency. This agreement does not create an agency, partnership, or joint venture.

f. No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

g. Use of contractors. AlphaBOLD may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

h. AlphaBOLD as an independent contractor. The parties are independent contractors. Customer and AlphaBOLD each may develop products independently without using the other's confidential information.

i. Agreement not exclusive. Customer is free to enter into agreements to license, use or promote non-AlphaBOLD products or services.

j. Applicable law and venue. This agreement is governed by California law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of California. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.

k. Entire agreement. This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Customer Service Agreement Terms, and (4) any other documents in this agreement.

l. Survival. All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

m. U.S. export jurisdiction. Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, enduse and destination restrictions issued by U.S. and other governments related to AlphaBOLD products, services, and technologies.

n. Force majeure. Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.

o. Contracting authority. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

9.   Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" is set forth in the Standard Terms and Conditions for Services and Products Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Standard Terms and Conditions for Services and Products Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

"Fix" means a Product fix, modifications or enhancements, or their derivatives, that AlphaBOLD either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Licensing Site" means http://www.AlphaBOLD.com/licensing/contracts or a successor site.

"Non-AlphaBOLD Product" is defined in the Online Services Terms.

"Online Services" means any of the AlphaBOLD online services subscribed to by Customer under this agreement, including BUILDFitters Online Services.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the AlphaBOLD Site and updated from time to time.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by AlphaBOLD to obtain customer feedback.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

"Product Terms" means the document that provides information about AlphaBOLD Products and Professional Services. The Product Terms are defined in Standard Terms and Conditions for Services and Products.

"Professional Services" means Product support services and AlphaBOLD consulting services provided to Customer under this agreement. "Professional Services" does not include Online Services.

"Reseller" means an entity authorized by AlphaBOLD to resell Software licenses and Online Service Subscriptions under this program and engaged by Customer to provide assistance with Customer Subscription.

"Software" means licensed copies of AlphaBOLD software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

"Subscription" means an enrollment for Online Services for a defined Term as established by AlphaBOLD or AlphaBOLD's authorized Reseller.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Use Rights" means the use rights or terms of service for each Product. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by AlphaBOLD in the Standard Terms and Conditions for Services and Products Terms.