

## Online Subscription License Agreement

### TERMS OF USE AND LICENSE

Updated on April 1, 2023

**Important – Please read this Online Subscription License Agreement carefully.**

BY COMPLETING THE ELECTRONIC ACCEPTANCE PROCESS AND DOWNLOADING BUURST(tm) PRODUCTS OR SERVICES, YOU REPRESENT AND WARRANT THAT YOU: (i) ARE 18 YEARS OF AGE OR OLDER; (ii) ARE AUTHORIZED TO SIGN FOR AND BIND, THE CONTRACTING PARTY DEFINED BELOW AS “CUSTOMER;” AND (iii) HAVE READ, UNDERSTAND AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS ONLINE SUBSCRIPTION LICENSE AGREEMENT.

If you do not agree with the conditions set forth in this Agreement, you may choose not to approve, and immediately cease all download and use of, the Site and Products (prior to accessing the Product contained on the Site or installed within your computing environment). Once you access the Product on the Site or within your computing environment, for a free trial or actual purchase, you agree to the terms and conditions set forth in this Agreement and agree that this Agreement shall become legal and binding.

#### 1. **BINDING AGREEMENT; GRANT OF LICENSE**

This Online Subscription License Agreement (this “Agreement”) is a legal and binding instrument entered into as of the date of electronic acceptance by Customer (the “Effective Date”), by and between Buurst, Inc. (the “Company” or “Buurst.com”), and “Customer,” the individual or entity identified during the Online Registration as the “Customer”. The Company reserves the right to amend this Agreement from time to time without notice to Customer. The most current version of this Agreement can be reviewed by clicking on the [Online Subscription License Agreement link](#).

All content contained within the Buurst.com and related websites, including but not limited to Buurst.com and other third-party websites offering the Product for subscription (collectively, the “Site”), and Buurst™ software, are hereinafter collectively referred to as “Product”, and are governed by this Agreement.

All content, literary work, concepts and ideas contained within, conveyed by and accompanying the Product and/or Site belongs to and is the sole property of the Company and its use is governed by this Agreement.

**Grant of Limited License.** Customer (and only Customer, and not any affiliate) is hereby and thereby granted a non-exclusive, non-transferrable, non-sublicensable, revocable, limited use license to make use of the Product and/or Site, as further described herein. Except those rights expressly granted in this paragraph, Buurst.com grants and Customer receives no other rights or licenses to the Product, derivative works (as defined in the United States copyright Act of 1976, Title 17 USC Section 101 et. Seq.) or any intellectual property or proprietary rights related thereto, whether by implication, estoppel or otherwise. Customer acknowledges and agrees that Buurst.com is the sole and exclusive owner of all right, title, and interest in and to the Products and any other products or services provided by Buurst.com, and that Buurst.com shall retain all intellectual property and proprietary rights in or related to the Product and the other products and services provided by Buurst.com.

**Online Registration.** To subscribe to Product via the Site, Customer may complete an online registration process. Buurst.com may reject an online registration or purchase by a potential

Customer in its sole discretion and is not obligated to provide a reason for its rejection or choice not to provide service. In the event a potential Customer's online registration or purchase is rejected by Buurst.com, such potential Customer may submit a new online registration for re-evaluation by Buurst.com.

**Registration Data.** As part of the online registration process, Buurst.com will collect certain limited information about Customer ("Registration Data"). All Registration Data provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Registration Data as necessary. Buurst.com reserves the right to terminate this Agreement immediately in the event any Registration Data is found to be inaccurate, incomplete or not current at any time.

**Account Password/Security.** As part of the online registration process, Customer will establish one or more user or login accounts. Customer is entirely responsible for maintaining the confidentiality of its password and account login information, and Customer is solely responsible for any and all activities that occur under its account. Customer agrees to notify Buurst.com immediately of any unauthorized use of its account or any other breach of security. Buurst.com shall not be liable for any loss that Customer may incur as a result of a third party using its password or account, either with or without its knowledge. Customer may be held liable for losses incurred by Buurst.com or another party due to a third party using Customer's account or password. Customer agrees not to provide its password or account login information to any third party for any reason. Customer acknowledges and agrees that in order to provide Customer with access to and use of the Products and Site, Buurst.com may provide Customer's access information and account data to (i) Customer's employee or agent who is identified in the Registration Data as the current system administrator for Customer's account (the "Current Administrator"), (ii) such other employee or agent who may be designated by Customer as a replacement administrator for Customer's account by following the procedures required by Buurst.com to effectuate such replacement, and (iii) any other person identified as an authorized user of the Products and Site on Customer's behalf in the online registration form, Registration Data, or in any subsequent communication to Buurst.com.

**Payment Information.** As part of the online registration process, Buurst.com and/or its authorized payment processor partners will collect certain additional information related to billing and payment matters ("Payment Information"). Such Payment Information will include a valid debit card, credit card number, PayPal account or other payment processor with available credit sufficient to pay the applicable Fees (as defined below), an election of a preferred billing frequency, and other information as required by Buurst.com. All Payment Information provided by or on behalf of Customer must be current, complete and accurate, and Customer is solely responsible for updating such Payment Information as necessary. Customer hereby authorizes Buurst.com, from time to time, to take steps to determine whether the debit card or credit card number provided is valid. Buurst.com reserves the right to terminate this Agreement immediately in the event any Payment Information is found to be inaccurate, incomplete or not current at any time. Buurst.com shall not be responsible for any overdraft charge or other fees that may be incurred by Buurst.com's use of Customer's debit card or credit card.

**Subscription Fees.** Customer is responsible for all subscription fees and other fees and payments (the "Fees") associated with Customer's use of the Product, and hereby authorizes Buurst.com to obtain payment of all such Fees in accordance with the Payment Information. Fees for a particular Product applicable to Customer are published on the marketplace or on

the Site from which Customer acquired or subscribed for the Product. Fees may be subject to change without prior notice, and changes shall be published on such marketplace or Site. If customer adopts a usage-based or consumption-based pricing structure, then the rate for and method of such pricing calculation as well as other terms and conditions are set forth on the applicable marketplace's website or informational materials provided to Customer, all of which may be subject to change without prior written notice. Customer shall also be responsible for all applicable taxes (withholding tax, sales tax, use tax, services tax, value-added tax (VAT), goods and services tax (GST), etc.) or duties imposed by any government entity or collecting agency EXCEPT those taxes based on Buurst.com's net income. All Fees shall be invoiced and paid in US dollars and will not be adjusted for fluctuations in exchange rates. Customer shall pay all invoices upon receipt. All such payments are deemed to be Customer's acceptance of such invoices except for any portion timely disputed or contested, and shall be deemed Customer's waiver to subsequently dispute or contest such invoice. Invoices not paid within five (5) days after receipt shall be subject to a late payment equal to the lesser of (i) 18% per annum or (ii) the highest rate permitted by applicable law upon the unpaid amount.

**Confidential Information and Privacy.** Unless expressly authorized in writing by the other party, neither party shall disclose to any third party any non-public information or materials provided by the other party under this Agreement and reasonably understood to be confidential ("Confidential Information"), or use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that (i) is in or becomes available through the public domain, (ii) is already lawfully in the receiving party's possession, (iii) was known to the receiving party prior to the date of disclosure, (iv) becomes known to the receiving party from a third party having an apparent bona fide right to disclose the information, or (v) Confidential Information that the receiving party is obligated to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, provided receiving party provides disclosing party timely notice of such court order or subpoena. Furthermore, Customer will keep in strict confidence all passwords and other access information to the Products. Customer shall for the duration of this Agreement and for any period required by law thereafter, be solely responsible for complying with its obligations under applicable and country specific data protection and privacy laws (including, but not limited to, the Directive 95/46/EC of the European Parliament and, once it comes into effect, Regulation 2016/679 of the European Parliament and of the Council (the "GDPR") and such other laws in respect of obtaining necessary registrations and consents for the use, distribution and processing of such data) with regard to all data that Customer may collect, store, retain or use in connection with the Product and/or Site ("Data"). Customer shall not provide any Personally Identifiable Information to Buurst.com, other than as may be included in Registration Data expressly requested by Buurst.com. Customer shall indemnify, defend and hold Buurst.com and its officers, directors and employees harmless and keep them indemnified from and against all claims and proceedings made or brought by any person in respect of any loss or damage to that person or in the exercise of that person's statutory rights by reason of any wrongful disclosure, use or destruction of any Personally Identifiable Information provided by Customer or its affiliates to Buurst.com in breach of the foregoing. Customer is responsible for ensuring that Buurst.com has the right to lawfully obtain and process the information provided to Buurst.com by Customer and collected by Customer from Customer's employees, contractors, personnel, vendors and end users in accordance with

and Applicable Data Protection Law(s) (as defined below), including, but not limited to, by obtaining any necessary consents from, and providing notices and/or consent withdrawal mechanisms to, Customer's employees, contractors, personnel, vendors and end users in accordance with Applicable Data Protection Law(s). Customer will provide Buurst.com with such information and co-operation as Buurst.com may reasonably request to assist Buurst.com in complying (and evidencing its compliance) with Applicable Data Protection Law(s) in relation to such information. As used herein, "Applicable Data Protection Law(s)" means any and/or all laws, rules, directives and regulations, on any local, provincial, state, federal or national level, pertaining to data privacy, data security and/or the protection of personal information including, but not limited to the European Privacy Directive 95/46/EC, as amended, the GDPR, as and when effective, and each European Union Member States' national implementation thereof. "Personally Identifiable Information" shall mean any information about an individual which can be used to distinguish or trace an individual's identity, including but not limited to e-mail, name, date and place of birth, biometric records, driver's license or other government issued identification card numbers, credit or financial account numbers and personally identifiable payroll / financial information including employee identification numbers.

**Reproduction of Intellectual Property.** Any reproduction, copying, or any other form of unauthorized use of the intellectual property contained within the Site or Product is strictly forbidden without the express written consent from an authorized officer of Buurst.com, except as provided for herein

**Versions and Updates.** By purchasing a subscription to the Product, Customer is entitled to use of the currently installed version of the Product, along with periodic updates, enhancements, and fixes as published at Buurst.com, for as long as Customer's paid-up subscription to the Product remains current and in effect.

**Setup Wizard Tool.** At any time Customer may access and activate the setup and configuration wizard tool found on the Site (the "Tool"). The Tool is optional, and Customer is not required to use it in connection with any Product. The Tool is intended to help Customer launch a Product using Buurst.com's recommended configurations based on Customer's responses and selections to certain questions in the Tool. Accordingly, Customer agrees that the settings that the Tool selects is dependent on these responses and Customer's understanding of its specific use case, IT infrastructure, and data and security systems. At various times, it may be necessary for Customer to change the recommended setups and configurations to meet Customer's specific needs. Customer agrees to adopt industry best practices for data backup and restoration on any instance created by the Tool.

**Term of this Agreement; Termination.** This Agreement remains in effect so long as the Product is installed or used by Customer and Customer's subscription to Product remains current and paid-up. This License remains in full force and effect so long as Customer's account is active and current, unless explicitly terminated, in writing, by Customer

Upon termination of this Agreement, Customer agrees to cease using the Product, the techniques, the methods and processes Customer has gained from the Product and to destroy all copies of the Product material Customer has in its possession, on its personal computers, servers and other storage devices, including storage in email accounts or otherwise stored electronically, in hardcopy or other physical or non-physical form. The terms and provisions of this Agreement that reasonably would be expected to survive the termination or expiration of this Agreement shall survive such termination or expiration.

## **2. LICENSE RESTRICTIONS**

### **Customer may not:**

- (a) permit other unlicensed individuals or companies to access or use the Product or Site, without express written permission of Buurst.com. The Product is licensed for use by a company or a user at a specific company who is named and associated with the purchase receipt of the Product;
- (b) modify, translate, reverse engineer, decompile, disassemble, deconstruct, or create derivative works based upon the Product;
- (c) defeat or attempt to defeat any security, copy-protection or license enforcement mechanisms provided with the Product;
- (d) rent, lease, transfer, timeshare, sublicense or otherwise transfer any rights in or to the Product;
- (e) remove any copyright notice, proprietary notices or other labels on or within the Product and its content;
- (f) use the Product for any reason other than Customer's own use in operating Customer's own business as an end-user of Product; provided, that, if Customer's business is to provide services to end-users, then Customer may use the Product in connection with the provision of such services to end-users so long as such end-users adopt the terms and provisions of this Agreement;
- (g) post the Product or its content on any Internet blog, internal or external file system, web site, public forum or other public location;
- (h) download the Product content to save on personal computers or other storage devices, except for portions of the Product which are specifically designed to produce downloadable content and include an explicit link or button designated with the word "download" or "copy";
- (i) remove, alter or in any way modify the Product content, including but not limited to, Buurst.com copyright notices, logos or other Product content, except as designated in 2.h above;
- (j) resell, distribute, or otherwise use any of the services on a timeshare or service bureau basis;
- (k) access and/or use any of the Products in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the Site or the networks or security systems of Buurst.com;
- (l) tamper with the Product in any way, gain access to managed data beyond an active, paid-up Subscription Period (as defined below), or in any way alter or interfere with Buurst.com in its efforts to protect the Product and enforce proper payment as agreed upon herein; or
- (m) use the Product(s) beyond the terms, capacities and features set forth in Customer's subscription of such Product(s); it being understood that Customer's usage in violation of such terms, capacities and features will allow the Company, in its sole discretion, to do any or all of the following without prior notice to Customer: (i) terminate Customer's subscription due to a default pursuant to Section 7; (ii) reduce, restrict, limit or modify Customer's use of and/or access to the Product(s) and its features and performance; or (iii) bill Customer of use of such addition

### **Customer may:**

- (a) access and use the Product for individual, personal and business use on the virtual machines, cloud computing instances or physical machines licensed for use, provided that only



the licensed normal end-users associated with the Product's original purchase makes use of the Product. Customer may only use the Site and Product for Customer's own use in operating its business and IT infrastructure. Customer agrees use of the Product requires pre-payment; and (b) use the data managed and published by the Product that is specifically intended for use in application, databases, emails and/or other computing workloads, on Customer's own computing environment (or cloud computing environments licensed by Customer).

**Customer will:**

- (a) make its own best efforts to migrate, copy, back up, move or otherwise protect its data (beyond the normal services provided by Buurst.com and Product);
- (b) adopt industry best practices for data backup and restoration;
- (c) validate and test the Product (including any customization or custom modules of the Product) in a test environment to determine its suitability, compatibility, and appropriateness for a sufficient period of time and under appropriate conditions in its IT infrastructure prior to accepting or using the Product live; and
- (d) migrate its own data out of the Buurst.com storage environment and Product prior to expiration of Customer's Subscription Period, in the event Customer chooses not to renew its subscription. Buurst.com may delete all contents and information related to cancelled or expired Subscription Period. Once an account is cancelled or expires and the account and related information have been deleted, Buurst.com is not responsible for any data loss or service interruption that may result.

No other rights are granted hereunder except as expressly set forth in this Agreement.

**Buurst.com may:**

- (a) reference Customer and associated logo as a current or former customer;
- (b) offer Customer other services, products, or promotions ("Additional Services"). By using the Site and/or Product Customer gives us permission to use information about Customer's business and experience to help Buurst.com to provide the Additional Services to Customer;
- (c) from time to time, in Buurst.com's sole discretion and with reasonable notice posted on the Site and/or sent to Customer at the Current Administrator's email address provided in the Registration Data, to revise, update, or otherwise modify the Products and the Site and establish or change limits concerning use of the Products and Site, temporarily or permanently. Buurst.com reserves the right to make any such changes effective immediately to maintain the security and integrity of the Products, Site or users' access information or to comply with any laws or regulations, and to provide Customer with electronic or written notice within thirty (30) days after such change. Customer may reject changes by discontinuing use of the Products and Site to which such changes relate. Customer's continued use of the Products or Site will constitute Customer's acceptance of and agreement to such changes. Buurst.com may, from time to time, perform maintenance upon the Site resulting in interrupted service, delays or errors in the Site. Buurst.com will attempt to provide prior notice of scheduled maintenance but cannot guarantee that such notice will be provided;
- (d) subject to our Privacy Policy Statement, offer products and services on behalf of third parties who are not affiliated with Buurst.com ("Third Party Products") or the Site may contain links to third party websites ("Third Party Sites"). Customer agrees that Buurst.com can use Customer's contact information, including name and address, for the purpose of offering these products to Customer in accordance with Customer's stated contact preferences. If Customer decides to

use any Third Party Products or access any Third Party Sites, Customer is responsible for reviewing the third party's separate product terms, website terms and privacy policies, and paying any fees, if any, associated with the Third Party Products or Third Party Sites. Customer agrees that the third parties, and not Buurst.com, are responsible for their product's performance and the content on their websites. Buurst.com are not affiliated with these Third Party Products or Third Party Sites and have no liability or responsibility for them; and (e) collect and share Customer's license, usage, Product and similar data with Buurst.com's vendors in order to manage and monitor Customer's license keys and usage of Products.

### **3. FREE TRIALS**

Buurst.com may provide access to Product on a convertible or time-limited "free trial" basis, provided the conditions of such free trial are met. Free trials of the Product are conditioned upon:

- (a) Free trial access, if provided, is as a "subscription" service for a limited-time, hereinafter termed the "trial period", as a means of evaluating the Product and its capabilities for Customer's specific needs, and as an inducement for the future purchase of a paid membership. For convertible free trial offers (if any), a credit card or other acceptable payment "authorization" may be required as collateral in the amount of the Product, as a deposit for future, automatic purchase by Customer upon expiration of the trial period (unless Customer explicitly cancels by following the proper process prior to the trial period expiring).
- (b) for automatic conversion from a trial subscription to a paid subscription upon expiration of the trial period, if Customer has not cancelled prior to the trial period's expiration and billing, if applicable. For fixed-period, non-convertible (e.g., 60-day trial) free trials, there is no conversion to a paid subscription (customer must explicitly purchase a commercial-use subscription license to continue using the Product beyond the trial period).
- (c) Customer agrees that, upon a convertible free trial period expiration, Customer will be billed and become a paid-up subscription owner; and that there is no money-back guarantee or refund available after billing has occurred.
- (d) It is Customer's sole responsibility to make proper use of the free trial period to fully evaluate the Product to determine whether to continue as a paid member or cancel the subscription during the trial period.
- (e) Customer agrees that it is solely its responsibility to cancel its subscription prior to expiration of the free trial period, and that any failure to cancel on Customer's part is in no way the fault of Buurst.com, and Customer hereby authorizes the conversion of Customer's free trial to a paid up membership at the end of the trial period.
- (f) Customer agrees that once the trial period expires, if Customer has not explicitly cancelled as agreed upon herein, prior to being billed for the paid-up subscription conversion amount, no refunds will be due or paid to Customer by Buurst.com, and Customer hereby agrees not dispute such legitimate charges.
- (g) To be completely clear about this, it is Customer's sole responsibility to follow the free trial cancellation process to properly cancel its account prior to the expiration of the trial period; any emails Customer sends or other forms of communications requesting cancellation do not constitute valid cancellation, are invalid and do not serve as proper cancellation notice (except in the case where the normal cancellation process on the Site is found to be non functioning or otherwise unavailable for some reason, as determined solely by Buurst.com).

- (h) Customer agrees that it will not print, save or otherwise retain any content contained within the Product or Site during the free trial period, including but not limited to, Web pages or any content contained within the Product or generated by the Product.
- (i) Customer agrees that all content contained within the Product and/or generated by Product is copyrighted, proprietary material that Customer may not use for any purpose (other than evaluation of the Product itself) during the trial period.
- (j) Buurst.com may delete all contents and information related to cancelled free trial accounts at any time and at its sole discretion. Once an account is cancelled or expires due to non-payment and the account and related information have been deleted, Buurst.com are not responsible for any data loss or service interruption that may result.
- (k) Customer understands and agrees that during use of Product under a Free Trial license period, support will be limited to online forums only (no phone or email support may be available, at Company's discretion).
- (l) Upon expiration of free trial, the Product will cease to operate, no grace period is provided. Customer agrees this is reasonable, as free trial products are not authorized for production business use. Free trials are limited to evaluation purposes only, and Customer will not use free trials to operate its business with live data.

#### **4. RECURRING SUBSCRIPTION SERVICES**

Buurst.com provides access to the Product on a "subscription" or "managed service" subscription basis. Use of the Product is conditioned upon acceptance of the following recurring subscription terms and conditions:

- (a) Product access is being provided as a recurring subscription service for a specific period of time (e.g., one month, 1-year or multi-year), hereinafter termed the "Subscription Period" with features associated with a purchased license, hereinafter termed the "subscription". Such subscriptions involve the use of a credit card or other acceptable "payment method" in order to ensure Customer receives service continuity (until subscription is cancelled by Customer or expires).
- (b) At the end of each Subscription Period, the payment method on file will be automatically billed (if online billing is applicable) and a new payment period and Subscription Period will automatically commence. It is Customer's responsibility to ensure its payment method and billing information remain up-to-date to receive uninterrupted service.
- (c) Customer agrees that, upon expiration of a Subscription Period, Customer will be re-billed and its subscription will be renewed, and that there is no money-back guarantee or refund available after said billing or re-billing has occurred.
- (d) It is Customer's sole responsibility to determine whether Customer continues with its subscription or cancels its subscription before the expiration of each Subscription Period.
- (e) Customer agrees that it is solely its responsibility to cancel its BYOL subscription with Buurst.com at least ninety (90) days prior to expiration of each Subscription Period, and that any failure to cancel on Customer's part is in no way the fault of Buurst.com. If Customer or Buurst.com elects not to renew Customer's BYOL license, then Customer must either (i) continue using the Product(s) through a marketplace (such as AWS or Microsoft Azure), which will be under the terms, conditions, and pricing applicable at the time or (i) cease using the Products due to expiration of Customer's subscription of the Product and migrate Customer's data off of the Products as contemplated in this Section 4.



(f) Customer agrees that it will not attempt to cancel its subscription by sending an email, opening up a Support Ticket, leaving voice mails, calling by telephone, or any other non-approved means; instead, Customer agrees to follow the published cancellation process provided to Customer at the time it began the original Subscription Period (or as updated from time to time by Buurst.com with notice to Customer), and said process is also to be made available on the Buurst.com Customer Area and Buurst.com Support site in such a way that it is easy to locate; i.e., within the Customer's Account access area.

(g) Customer agrees that once a Subscription Period expires, if Customer has not explicitly cancelled as agreed upon herein, prior to being billed or re-billed for the subscription amount due, no refunds will be due or paid by Buurst.com, and Customer agrees not dispute such charges, which are considered legitimate.

(h) To be completely clear about this, it is Customer's sole responsibility to follow the subscription cancellation process to properly cancel its subscription prior to the expiration of a Subscription Period; any emails Customer sends or other forms of communications requesting cancellation do not constitute valid cancellation, are invalid and do not serve as proper cancellation notice (except in the case where the normal cancellation process on the Site is found to be non-functioning or otherwise unavailable for some reason, as determined solely by Buurst.com). The subscription cancellation process ensures that cancellation of service is only available to the authorized subscription and account owner, which prevents unauthorized or accidental account or service interruption.

(i) Within seven (7) days after subscription expiration or termination or payment failure, Buurst.com may, at its sole discretion and without prior notice, elect any or all of the following:

(i) prevent, restrict or limit Customer's continued use of some or all of the Product, (ii) charge Customer for continued usage of the Product(s) based published rates at the time, and/or (iii) delete all contents and information related to cancelled accounts at any time and at its sole discretion. Once an account is cancelled or expires and the account and related information have been deleted, Buurst.com is not responsible in any way for any data loss or service interruption that may result.

(j) It is solely the Customer's responsibility to migrate, copy or otherwise move or back up its data prior to subscription termination or non-payment. In the case of expired customer accounts, to obtain access to data still managed by Buurst.com, Customer agrees to renew its subscription for a 30-day period solely to complete data migration (if account has terminated or failed to renew for nonpayment).

(k) Some Product subscriptions include a "grace period", which is typically from 3 to 7 days in duration. Once a subscription terminates, the grace period (if any) may apply. During the grace period which follows failed re-billing or account or subscription expiration or cancellation, the Product will continue to function normally, and the Customer may receive email and other notices about the terminated or expired subscription. During the grace period, Customer must choose whether to renew its subscription for an additional 30-day period solely to allow for data migration, or continue operating with an expired or cancelled account/subscription for the duration of the grace period. Upon expiration of the grace period, the Company may place all Product file systems into a "read only" state, preventing further data from being written to data storage. Customer agrees this is a reasonable measure for Company to take, given non-payment for continued use of Product, and the Company making every reasonable effort to protect Customer's data and provide a grace period during which subscription re-billing can be

resolved. All existing data written to storage managed by Product prior to the grace period expiration should remain intact, and be available to customers who wish to migrate their data to another storage solution.

(l) Customer agrees not to continue use of any Product for which the Product's subscription and/or grace period (if any) have been cancelled or terminated. Customer agrees that any such further use of Product beyond these termination periods constitutes a breach of this Agreement, and entitles Buurst.com to payment and/or damages.

5. **DISCLAIMERS.** The authors and publisher of the Site and Product and all accompanying materials have used their commercially best efforts to provide the best possible information and product, yet Customer's use of the Products, the Tool, and this material is entirely at its own risk. Buurst.com, its authors, publisher, affiliates, officers, directors, employees, agents, suppliers, shareholders, members, and licensors (collectively, the "Buurst Parties") make no representation or warranties of any kind with respect to accuracy, fitness, applicability, or completeness of the the Products or the Tool. Buurst Parties do not warrant that Customer's use of the Products or the Tool will be effective, uninterrupted or that the operation of the Products or Tool will be error-free. Customer accepts any and all risks associated with its decisions to use the Products and Site and acknowledges that it has had opportunity review, test and determine that the Products and Site are adequate and sufficient for Customer's intended uses, which determination has been made independent of any information provided by the Product.

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TO THE EXTENT THAT ANY IMPLIED WARRANTIES CANNOT BE EXCLUDED OR DISCLAIMED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE MINIMUM AMOUNT PERMITTED BY APPLICABLE LAW. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY IN SUCH STATES. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

All links are for informational purposes only and are not warranted for content, accuracy, or any other implied or explicit purpose. Some links may involve compensation for referred products as an affiliate.

#### **6. LIMITATION OF LIABILITY**

Customer accepts any and all risks associated with its decisions, whether or not such decisions are based in whole or part upon information provided by the Site, Product, or Tool.

ACCORDINGLY, CUSTOMER SHALL SOLELY BEAR THE RISK OF ANY DATA LOSS OR CORRUPTION IN USING THE PRODUCT OR THE TOOL.

IF CUSTOMER ACQUIRED THE PRODUCT IN THE UNITED STATES, LATIN AMERICA, THE CARIBBEAN OR CANADA, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL THE BUURST PARTIES BE LIABLE FOR ANY INDIRECT, MORAL, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, MULTIPLE, PUNITIVE OR OTHER DAMAGES RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY, LOST PROFITS, INTERRUPTION OF BUSINESS DAMAGES, COSTS OF RECOVERY OR ANY OTHER DAMAGES (COLLECTIVELY, "SPECIAL DAMAGES"), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE SITE, PRODUCTS OR TOOL, WHATSOEVER AND HOWSOEVER ARISING AND BASED ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE, OR OTHERWISE, AND WHETHER OR NOT THE BUURST PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF CUSTOMER ACQUIRED THE PRODUCT IN EUROPE, THE MIDDLE EAST, AFRICA, ASIA OR OCEANIA, IN NO EVENT WILL THE BUURST PARTIES, BE LIABLE FOR ANY LOST REVENUE, LOST PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING, INCLUDING, WITHOUT LIMITATION, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE SITE, PRODUCT OR TOOL, EVEN IF, IN EACH CASE, THE BUURST PARTIES, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT FULLY APPLY TO CUSTOMER. THE FOREGOING EXCLUSION SHALL NOT APPLY TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH: (I) DEATH OR PERSONAL INJURY, (II) FRAUDULENT

MISREPRESENTATION, OR (III) BUURST.COM'S LIABILITY IN CONNECTION WITH ANY TERMS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

IF CUSTOMER ACQUIRED THE PRODUCT IN JAPAN, EXCEPT FOR LIABILITY ARISING OUT OF OR IN CONNECTION WITH DEATH OR PERSONAL INJURY, FRAUDULENT MISREPRESENTATION, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL THE BUURST PARTIES BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SITE, TOOL, PRODUCT OR OTHERWISE AND EVEN IF THE BUURST PARTIES OR ANY APPROVED SOURCE OR THEIR SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF CUSTOMER ACQUIRED THE PRODUCT IN THE UNITED STATES, LATIN AMERICA, CANADA, JAPAN OR THE CARIBBEAN, NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, THE BUURST PARTIES' AGGREGATE LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED THE MOST RECENT SUBSCRIPTION PAYMENT AMOUNT OR \$100.00, WHICHEVER IS LESS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

IF CUSTOMER ACQUIRED THE PRODUCT IN EUROPE, THE MIDDLE EAST, AFRICA, ASIA OR OCEANIA, NOTWITHSTANDING ANYTHING ELSE IN THE AGREEMENT TO THE CONTRARY, ALL LIABILITY OF THE BUURST PARTIES TO CUSTOMER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO BUURST.COM OVER THE IMMEDIATELY TWELVE MONTH PERIOD FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). NOTHING IN THE AGREEMENT SHALL LIMIT (I) THE LIABILITY BUURST.COM TO CUSTOMER FOR PERSONAL INJURY OR DEATH CAUSED BY THEIR NEGLIGENCE, (II) BUURST.COM'S LIABILITY FOR FRAUDULENT MISREPRESENTATION, OR (III) ANY LIABILITY OF BUURST.COM WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

CUSTOMER ACKNOWLEDGES AND AGREES THAT BUURST.COM HAS SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH ABOVE, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

## **7. TERMINATION**

Buurst.com may terminate this Agreement at any time should Customer violate the terms of this Agreement or fail to render payment as agreed upon herein. If this Agreement is terminated by Buurst.com for cause, no refund will be provided.

Upon termination of this Agreement, Customer agrees to immediately move, copy and remove any critical data managed by Buurst.com and Product within seven (7) days, and then cease use of Product and Site, destroy all copies or other Product materials Customer have downloaded, and cease use of and access to the Product and Site, except as otherwise provided herein.

Upon termination of this Agreement, Customer agrees that Buurst.com may retain all monies paid for Product, whether or not the full term of the original subscription has been completed. Upon termination of this Agreement, Customer will immediately discontinue all access to and use of the services. Buurst.com shall not be liable for any damages resulting from a termination of this Agreement as provided for herein; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination.

#### **8. SERVICE AND SUPPORT LEVELS**

During the Subscription Period, the Company shall provide Customer with the support and service levels applicable to Customer's use and registration of the Products as described at [https://www.buurst.com/wp-content/uploads/2020/05/Buurst\\_Support-Info\\_v2.pdf](https://www.buurst.com/wp-content/uploads/2020/05/Buurst_Support-Info_v2.pdf) (the "Support Program"). Customer hereby agrees that the following terms and conditions shall govern the delivery of support services and support levels by the Company to Customer under the Support Program:

(a) The Company will provide Customer and the allotted authorized Customer users specifically identified in the registration process ("Technical Support Contacts") the support services and levels described in the Support Program ("Support Services"). Such descriptions, as may be amended from time to time, are deemed to be part of this Agreement. Customers who have ordered the Support Services, accepted this Agreement and, if applicable, paid the Annual Support Fee as set forth below. Support Services will be delivered by a member of the Company technical support team to the Technical Support Contacts during the days and times set forth in the Support Program. The Company has the right to subcontract any of the Support Services to third parties without Customer's prior authorization. Support is delivered in English only, unless the Customer is in a location where localized support has been made available by the Company at the Company's discretion. Customer shall promptly notify the Company if such individuals are no longer designated as Technical Support Contacts. The Support Services are only applicable to the Products specifically associated with each level of the Support Program (the "Supported Product") and to no other instances of products or services Customer may also be using. The term "Annual Support Fee" as used in this Agreement means the Annual Support Fee set forth on the Support Program.

(b) Customer shall have access to the Company's services via remote computer access ("Remote Services"). Should Customer choose to access the Remote Services, Customer hereby grants permission to the Company to access the Supported Product, including any and all systems on which it resides, for the sole purpose of providing Support Services to Customer.

CUSTOMER ACKNOWLEDGES THAT IT MAY CONTROL ALL OF THE COMPANY'S ACCESS TO THE SUPPORTED PRODUCT AND TO CUSTOMER'S SYSTEMS BY SELECTING A "HIGH" SECURITY SETTING AND MONITORING ALL SUCH ACCESS; PROVIDED, HOWEVER THE COMPANY SHALL NOT BE LIABLE FOR ANY FAILURE TO PROVIDE SUPPORT SERVICES AS A RESULT OF CUSTOMER'S SECURITY SETTINGS AND MONITORING OF THE COMPANY'S ACCESS TO CUSTOMER'S SYSTEMS.

(c) Customer will commence implementation of the solutions and/or follow the recommendations provided by the Company reasonably promptly after the Company's communication of such solutions or recommendations to Customer's Technical Support Contacts. Customer shall promptly notify the Company if such solutions and/or recommendations fail to resolve a specific issue or creates a new issue.



(d) The Company may limit or terminate the Support Services being provided if Customer uses the Support Services in an abusive, unprofessional, or fraudulent manner, as determined by the Company in its reasonable discretion. Examples of such use include a high number of calls that concern previously resolved issues, repeated posing of questions to which the answer is readily found in the documentation, and discussion of issues that are not related to technical support of the Products. Additionally, once the Company determines, in its sole discretion, that an issue, error or problem is not caused solely by the Products, the Company may, in its discretion, impose a charge equal to the Company's then-prevailing charge for professional services for any continued support or service. Resale or assignment by Customer is strictly prohibited and will be grounds for termination of this Agreement. Replacing an authorized user with a different Technical Support Contact is permitted so long as the contact is not the owner of the Support Program and the request is done in writing prior to providing Support Services to the new Technical Support Contact. the Company will only provide Support Services for Products that are properly registered with the Company.

(e) The Company shall not be required to provide any Support Services relating to problems or issues arising out of or from (i) Customer's use of the Products inconsistent with the Company's instructions or in a manner for which Supported Products were not designed or modification of the Supported Products without the Company's prior written authorization; (ii) damage to the media on which the Supported Products are provided or to the computer on which the Supported Products are installed; (iii) Customer's negligence, misuse, or modification of the Supported Products; (iv) versions of Supported Products other than the most recent version (e.g., 5.x) but not older than version 5.2.0 (e.g., 4.x); (v) third-party products and technologies not specifically listed in the Support Program; (vi) conflicts related to replacing or installing hardware, drivers, and software that have not been approved by the Company; (vii) Customer's failure to implement solutions and/or follow recommendations provided by the Company in a timely manner or at all as contemplated above; (ix) Customer's failure to adopt industry best practices for data backup and protection or the failure of such best practices in preserving the Customer's data; or (x) the Customer's failure to properly test and validate the Supported Product to determine its suitability, compatibility and appropriateness for a sufficient period of time and under appropriate conditions in its IT infrastructure prior to using the Supported Product live.

(f) For paid support levels under the Support Program, the Company shall provide the applicable Support Services for a term of one (1) year after the date such paid support level is selected (the "Initial Support Term"). Subsequent one year renewal terms are optional and may be subject to terms, conditions and fees different from those stated herein. Customer may be subject to additional fees prior to the reinstatement of any paid Support Services hereunder.

(g) Notwithstanding anything to the contrary herein, the support services may be terminated by the Company for failure of Customer to pay the Annual Support Fee (or any regularly scheduled portion thereof), as may be applicable, if such failure to pay continues for ten (10) days after the Company gives Customer written notice of such failure. The Company may also terminate the Support Services if Customer materially breaches the terms of this Agreement and fails to cure such breach within thirty (30) days of written notice thereof, except that a material breach of any license granted to Customer in the terms of this Agreement applicable to the Supported Product shall be grounds for immediate termination of the Support Services.

(h) Customer acknowledges that the Company has the right to discontinue the manufacture and development of any of the Supported Products and the Support Services for any Supported Products, including without limitation the distribution of older versions of Supported Products, at any time in its sole discretion. The Company reserves the right to alter the Support Services from time to time, using reasonable discretion but in no event shall such alterations result in (i) diminished support from the level of support set forth herein; (ii) materially diminished obligations for the Company; (iii) materially diminished rights of Customer, or (iv) higher Annual Support Fees during the then-current term. The Company shall provide Customer with written notice of any permitted material changes to these Support Services contemplated herein.

(i) The Company will use commercially reasonable efforts to provide the Support Services in a professional manner, but the Company cannot guarantee that every question or problem raised by Customer can or will be resolved. Nothing in this Agreement shall be construed as expanding or adding to the warranty for the Supported Product and/or other applicable agreement with the Company governing use of the Supported Product. All Support Services are made available and provided "as is" and "as available," without condition, endorsement, guarantee, representation or warranty of any kind by the Company and further subject to this Agreement.

EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION, OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO CUSTOMER IN ITS JURISDICTION, THE COMPANY MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, RELATED TO OR ARISING IN ANY WAY OUT OF THE SUPPORT SERVICES OR THE PROVISION OF MATERIALS OR SERVICES UNDER THIS AGREEMENT. THE COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(j) IN NO EVENT SHALL THE COMPANY'S LIABILITY OR THOSE OF ITS CONTRACTORS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS OR ASSIGNS (COLLECTIVELY, THE "BUURST PARTIES") ARISING FROM OR RELATED TO THE SUPPORT SERVICES EXCEED THE ANNUAL SUPPORT FEE PAID BY CUSTOMER FOR THE SUPPORT SERVICES ORDERED BY CUSTOMER FOR THE ANNUAL TERM IN WHICH THE LIABILITY AROSE, AND IF NO SUCH ANNUAL SUPPORT FEE IS PAYABLE, THEN \$100.00. IN NO EVENT SHALL ANY BUURST PARTY HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT OR FACILITIES, OR INTERRUPTION OF BUSINESS, ARISING FROM OR RELATED TO THIS AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT ANY BUURST PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

## **9. PROFESSIONAL SERVICES**

During the Subscription Period, Customer may from time to time request the Company to provide certain professional and development services pursuant to a mutually developed and acceptable statement of work, work order or similar order form (the "SOW"). Customer hereby agrees that the following terms and conditions shall govern the delivery and provision of the professional and/or development services (the "Professional Services") contemplated in the SOW by the Company to Customer:

(a) The terms and provisions of this Section 9 shall be incorporated into and constitute a part of the SOW.

(b) To the extent there is a conflict between this Section 9 and the SOW, the provisions of this Section 9 shall govern and control.

(c) The SOW shall not amend or revise this any portion of this Section 9 unless the provision intended to be amended or revised in this Section 9 is explicitly and expressly identified in such SOW.

(d) The SOW may amended or revised only with the written agreement of the Company and the Customer. Any change orders to the SOW shall require the written agreement of the Company and the Customer.

(e) The Company will retain sole and exclusive right to control or direct the manner or means by which the Professional Services are performed and may subcontract or assign any or all of its obligations and rights under the SOW.

(f) Customer shall make available in a timely manner at no charge to the Company all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information, personnel, and resources required by the Company for the performance of the Professional Services. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer and inability for the Company to timely perform the Professional Servies due to or arising from Customer's failure to meet its obligations under this Section (9)(f).

(g) Customer shall provide, at no charge to the Compnay, office space, services and equipment as the Company reasonably requires to provide the Professional Services.

(h) Each party will be and act as an independent contractor and not as an agent or partner of, joint venturer with, the other party for any purpose related to this Agreement, the SOW or the transactions contemplated by this Agreement or the SOW, and neither party will by virtue of this Agreement will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

(i) Each party agrees that notwithstanding the "Work for Hire" provisions contained in Sections 101 and 201 of the United States Copyright Law, Title 17 of the United States Code, any code, inventions, algorithms, know-how, ideas and all other business, technical and financial information relating to the Product (including, but not limited to, any customized or special coding, product or software requested by the Customer in connection with the Customer's use or deployment of the Product) resulting from or arising out of the Company's performance of the Professional Services shall be deemed proprietary information of the Company; and to the extent Customer has any interest or right therein, Customer shall assign, and hereby does assign, such proprietary information to the Company. Customer shall not use any such proprietary information for any purpose other than in connection with Customer's use or deployment of the Product. In addition to the requirements pertaining to Confidential Information, Customer will hold in confidence and not use or disclose any proprietary information of the Company and shall similarly bind its employees in writing.

(j) Nothing in this Agreement or any SOW shall be construed as to preclude the Company from developing, using, or marketing programs or other materials or services that may be competitive with the services or programs prepared for Customer hereunder, irrespective of

whether such programs or services are similar or related to the programs developed under a SOW or the Professional Services provided hereunder.

(k) Customer shall pay the Company for the Professional Services in accordance with the fees and rates set forth in the applicable SOW. The Company will invoice Customer on a biweekly basis as Professional Services are performed. All payments for fees and expenses must be made within thirty (30) days of the date of invoice. Customer agrees to pay or reimburse the Company for all federal, state, dominion, provincial or local sales taxes, fees or duties arising out of the SOW or the Professional Services (other than taxes on the net income of the Company). Unless otherwise agreed, Customer shall reimburse the Company for all reasonable travel and other related expenses approved by the Customer in advance and incurred by the Company in connection with performance of the Professional Services.

(l) Customer shall pay the Company one and one-half percent (1½%) interest per month on the outstanding balance of any fees or expenses not paid within thirty (30) days of the date of invoice. Customer shall be responsible for all costs incurred by the Company in order to recover payment of Customer's account, including without limitation, all professional fees and reasonable attorneys fees and legal costs. Without waving or prejudicing any other rights or remedies, the Company shall have the right to suspend or delay the provision of Professional Services on a day-for-day basis equal to the number of days a payment due hereunder is past due

**(m) Limited Warranty and Limitation of Liability Related to Professional Services.**

The Company warrants that the Professional Services will be performed in a professional and workmanlike manner conforming to generally accepted industry standards and practices. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED BY THE COMPANY IN THIS SECTION 9(m), THE CUSTOMER AGREES THAT USE OF THE PROFESSIONAL SERVICES IS ENTIRELY AT THE CUSTOMER'S OWN RISK, AND THAT THE PROFESSIONAL SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND OR RESPONSIBILITY EITHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OR RESPONSIBILITY AS TO, OF OR FOR (i) TITLE, NONINFRINGEMENT, MERCHANTABILITY, RESULTS TO BE OBTAINED, OR FITNESS FOR PARTICULAR PURPOSE, OR (ii) INFORMATION, INFORMATIONAL CONTENT OR COMPLETENESS OF ANY INFORMATION PROVIDED ON OR THROUGH THE COMPANY.

IN NO EVENT WILL THE COMPANY NOR ANY OF ITS OFFICERS, DIRECTORS, OWNERS, INDEPENDENT CONTRACTORS, EMPLOYEES, AGENTS, OR AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF PROFESSIONAL SERVICES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, THE COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SERVICES. THE COMPANY'S LIABILITY UNDER ANY SOW FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, RESTITUTION, WILL NOT, IN ANY EVENT, EXCEED THE FEES PAID BY CUSTOMER TO THE COMPANY UNDER SUCH SOW. THE COMPANY SHALL NOT BE LIABLE FOR ANY CLAIM OR DEMAND MADE AGAINST CUSTOMER BY ANY THIRD PARTY.

Customer shall indemnify Buurst against all claims by third parties related to this Agreement.

The provisions of this Section 10(m) allocate risks under each SOW between Customer and the Company. The Company's pricing under each SOW reflects this allocation of risk and limitation of liabilities.

(n) Each SOW shall be effective upon acceptance by the Company and will remain in effect, unless earlier terminated in accordance with Section 10(o) below until all of the Professional Services have been completed.

(o) Each SOW may be terminated, with or without cause, by Customer upon thirty (30) days' prior written notice to the Company, provided that no such termination will entitle Customer to a refund of any portion of the Professional Services fee. Each SOW may be terminated by the Company if Customer (i) fails to pay any amount due to the Company under this Agreement within thirty (30) days after the Company gives written notice of such non-payment, (ii) commits a material nonmonetary breach of this Agreement, which breach if capable of being cured, is not cured within thirty (30) days of written notice of such breach by the Company, (iv) terminates or suspends its business activities, (v) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (vi) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes that is not dismissed within ninety (90) days. In the event of any termination, each party shall pay to the other all amounts accrued hereunder, whether billed or unbilled, as of the date of the termination. There shall be no right of set-off.

(p) No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the acquisition or licensing of the Product will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement or the SOW, regardless of any failure of the Company to object to such terms, provisions, or conditions

q) Customer shall validate and test any module, application, coding, functionality, work flows, work plans, schematics and other work product delivered in connection with the Professional Services (collectively, the "Work Product") along with the Product in a test environment to determine its suitability, compatibility, and appropriateness for a sufficient period of time and under appropriate conditions in its IT infrastructure prior to accepting or using such Work Product live with the Product. Customer's use or deployment of such Work Product in a live environment shall be conclusive evidence of Customer's acceptance of the Work Product and acknowledgement that such work product meets all requirements of the Customer

(r) Neither party shall, during the term of any SOW and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the Professional Services, without such other party's express written consent.

## 10. ADDITIONAL TERMS

(a) **Authority.** Each party hereby represents and warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party.

(b) **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part, and any such attempted assignment or delegation shall be void,



unless Customer's corporate entity is acquired by, sold to or ownership of Customer's company is transferred to, another party

(c) **Force Majeure.** Buurst.com will not be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond the control of Buurst.com.

(d) **Choice of Law.** The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be interpreted and construed in accordance with the laws of the State of Texas without regard to conflicts of laws provisions thereof, and excluding the United Nations Convention on the International Sale of Goods. Subject to Section 10(p) below, the courts of the State of Texas will have exclusive jurisdiction to settle any dispute which may arise out of, under, or in connection with this Agreement. Buurst.com and Customer agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such action or proceeding. Any waivers or amendments will be effective only if made in writing. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action. Customer represents that it is not a government agency and it is not acquiring the license pursuant to a government contract or with government funds.

(e) **Export/Import Laws.** The parties will comply with all applicable U.S. and non-U.S. import and export control laws and regulations, including, but not limited to the U.S. International Traffic in Arms Regulations and Export Administrations Regulations, and will: (x) not transfer, directly or indirectly, any product, technical data, or software or the direct product of that technical data or software, to any country, until any government-required export license or approval is obtained; and (y) provide assistance or information to the other party as necessary to obtain government-required export/import licenses or approvals. Customer will obtain at its own risk and cost all required export or import licenses, documentation, and authorizations and carry out all related export or import formalities and procedures applicable to Customer's operations and use of the Products. If requested by Buurst.com, Customer will provide written assurances that the Products will not be used for any restricted end-uses as defined by U.S. and other applicable laws from time to time and will provide to Buurst.com copies of all applicable export and import licenses obtained pursuant to the foregoing upon request.

Without limiting the foregoing, Customer agrees that (1) neither Customer nor any of its affiliates nor any of its or their officers, directors, shareholders, members, or managers (collectively, the "Customer Parties") is, and are not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of, Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) the Customer Parties are not, and are not acting on behalf of, any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (3) the Customer Parties will not use the Products for, and will not permit the Products to be used for, any purposes prohibited by law, including, without limitation, for any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. U.S. Export Control Classification Numbers (ECCN's) may be found at <https://www.bis.doc.gov/index.php/licensing/commerce-control-listclassification/export-control-classification-number-eccn>.

(f) **High-Risk Use.** Customer hereby acknowledges that the Products and Tool are not designed or intended for access and/or use in or during high-risk activities including, but not limited to:

medical procedures; on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or the design, construction, operation or maintenance of any nuclear facility. Buurst.com hereby expressly disclaims any express or implied warranty of fitness for such purposes.

(g) **Proprietary Rights.** Buurst.com retains ownership of all proprietary rights in or associated with all its Products and services, the Tool and the Site, and Customer may not use the Buurst.com logo, or any other name, logo, icon or mark identifying Buurst.com's products and/or services without prior written permission of Buurst.com. All content, video, text and graphics on this site are protected by U.S. copyright and international treaties and may not be copied or re-used without the express written permission of Buurst.com, which reserves all rights.

(h) **Compliance with Laws.** Customer shall comply with all applicable laws, codes, ordinances, rules and regulations relating to Customer's access to and/or use of the Services. Customer represents and warrants to Buurst.com that none of the Customer Parties is, or shall not be during the term of this Agreement, in violation of any applicable laws, regulations, orders, sanctions or similar actions relating to terrorism, bribery, money laundering, embargo or restrictive trade practice (collectively, the "Anti-Terrorism Laws"), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order") and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act"). Further, Customer represents and warrants that none of the Customer Parties is or during the term of this Agreement shall be a "Prohibited Person," which is defined as follows: (i) a person or entity that is listed in the Annex to, or is otherwise subject to, the provisions of the Executive Order; (ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity with whom Buurst.com is prohibited from dealing with or otherwise engaging in any transaction by any Anti-Terrorism Law, including without limitation the Executive Order and the USA Patriot Act; (iv) a person or entity who commits, threatens or conspires to commit or support "terrorism" as defined in Section 3(d) of the Executive Order; (v) a person or entity that is named as a "specially designated national and blocked person" on the then-most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>, or at any replacement website or other replacement official publication of such list; and (vi) a person or entity who is affiliated with a person or entity listed in items (i) through (v), above. Customer shall notify Buurst.com immediately in writing upon the occurrence of any event that would render the foregoing representations and warranties inaccurate.

(i) **No Waiver.** The failure of either Customer or Buurst.com in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).

(j) **Severability.** If any provision of this Agreement is declared by judicial or other competent authority to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

(k) **No Third Party Rights.** This Agreement is by and between Buurst.com and Customer and all obligations, duties, responsibilities and benefits hereunder are only enforceable by the parties hereto. No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof and any rights of such person or entity to enforce this Agreement or any term hereof is hereby excluded.

(l) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and understandings with respect to the same.

(m) **Captions and Headings.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.

(n) **Language.** Only the most current English version of this Agreement is binding. In the event of inconsistency or discrepancy between the English version and any other language version of this Agreement, the English language version shall prevail.

(o) **Beta or Early Access Program (EAP) versions.** The terms of this subsection shall only apply to Customer with respect to any "Beta" or "Early Access Program" version of any of the Product (hereinafter referred to as "Beta Services") made available to Customer for purposes of evaluation and feedback. Any version or feature of the Product that is marked or identified as "Beta" or similar wording or designation (whether marked officially or through other communications with Customer) will be considered to be subject to this Section 10(o), and this Section 10(o) will be applicable thereto. Customer acknowledges that the Beta or EAP Product Customer is evaluating may contain defects, errors and other problems and is provided to Customer "as-is." Therefore, Buurst.com disclaims any warranty or liability obligations to Customer of any kind with respect to such Beta Services.

Customer further acknowledges the importance of communication between Buurst.com and Customer during Customer's use of the Beta Product and participation in Buurst.com's Beta program and hereby agrees to receive related correspondence and updates from Buurst.com. In the event Customer requests to opt-out from such communications, Customer's participation in the Buurst.com Beta program may also be canceled. Customer also hereby acknowledges that Buurst.com has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that Buurst.com has no express or implied obligation to Customer to announce or introduce the Beta Services. Customer agrees not to publish any information about its experience with the Beta Product to any third-party or make public statements, written or verbal, to others regarding its experience with Beta Product, without the express written consent of Buurst.com.

During the Buurst.com Beta or EAP program, Customer may be asked to provide feedback regarding Customer's use of the Beta Service(s) and Product, and Customer hereby grants to Buurst.com a perpetual, royalty-free worldwide license to use and/or incorporate such feedback into any Buurst.com product or service (including the Beta Services) at any time at the sole discretion of Buurst.com. With respect to the Beta Services, this subsection shall supersede any other terms and conditions contained herein, but only to the extent necessary to resolve conflict.

(p) **Dispute Resolution.** All claims or disputes arising in connection with this Agreement which are not settled by the parties within sixty (60) days after notice is first given by either party to the other will be exclusively and finally settled by arbitration under the American Arbitration

Association Commercial Arbitration Rules. The seat or legal place of arbitration shall be in Houston, Texas. The language to be used in all arbitral proceedings and related documentation and testimony shall be English, and judgment upon the award rendered by the arbitrator(s) may be entered in to any court having competent jurisdiction over it. The award rendered by the arbitrator(s) shall state its reasoning and not include any type of damages that are expressly excluded against a particular party hereunder. Either party may request a court of competent jurisdiction in accordance with Section 10(d) above to provide interim relief without waiving this Agreement to arbitrate disputes. Each party shall pay for and bear the costs of its own experts, evidence and legal counsel and its own pro-rata share of the cost of arbitration. Customer expressly consents to arbitration under this provision and to the jurisdiction of the courts to enforce any award made hereunder. Customer expressly waives any claim of sovereign immunity specifically and exclusively to Buurst.com for the limited purposes of enforcement of this Agreement.

(q) **Notices.** Any notices that are required to be given hereunder shall be in writing and sent to the address of Customer as provided in the Registration Data and to the address of Buurst.com at 10000 Memorial Dr., Suite 888, Houston, Texas 77024. Notice may be delivered personally or sent by registered delivery service and shall be deemed effective on the date that is the earlier of: (a) one business day in the United States after being sent by registered signature required delivery service, and (b) actual receipt evidenced by signature.

(r) **No Partnership.** The relationship of the parties hereto is that of independent contractors and nothing contained herein will create or imply an agency, employer, or partnership relationship between the parties.

(s) **Injunctive Relief.** Actual or threatened breach of Sections 1, 2, 3, 7, and 10 may cause immediate, irreparable harm that would be difficult to calculate and could not be remedied by the payment of damages alone. Accordingly, Buurst.com will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any such breach in any court of competent jurisdiction over Customer