

# End User Licence Agreement

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**This End User Licence Agreement (EULA) constitutes an agreement between You and 3CP. This EULA governs your use of the Software.**

**If you do not accept the terms of this EULA, do not install use or access the Software. By installing, using or accessing the Software, you agree to be bound by the terms of this EULA.**

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**2. Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Auckland, New Zealand.

**3. Claim** means a claim, demand or proceeding arising out of a cause of action in connection with the operation of this licence (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).

**Consequential Loss** means:

(1.a) any loss of profits, loss of data, loss of interest, trading losses, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss and increased operating costs; and

(1.b) any consequential, indirect or incidental loss,

suffered or incurred by any person (including a Customer), whether arising in contract or tort (including negligence) or under any statute, regardless of whether 3CP has been advised of the possibility of such loss or damage.

**4. Damages** means all liabilities, losses, damages, costs, charges, expenses, outgoings and payments (including legal costs on a full indemnity basis and Consequential Losses), whether incurred or awarded against 3CP, and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties, regardless of the Claim under which they arise.

**5. Force Majeure** means any cause beyond 3CP's reasonable control, including acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, restrictions or prohibitions of any government or semi-government authority.

**6. Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including:

6.1 patents, copyright, know-how, circuit layout rights, registered designs, trade marks, and any right to have Confidential Information kept confidential; and

6.2 any application or right to apply for registration of any of the rights referred to in paragraph 6.1, patents, copyright, know-how, circuit layout rights, registered designs, trade marks, and any right to have Confidential Information kept confidential; and.

**Licensor** means 3CP Limited

**Licenser IP** means all Intellectual Property Rights belonging to 3CP and includes all Intellectual Property Rights in the Software.

**Release** means each release of the Software that corrects an error or defect in, or enhances the previous form of, that Software.

**Software** means the object code of:

- (a) the software known as '**BuildOnBudget**' and
- (b) each new Release and new Version,

irrespective of how the Software is branded or whether You obtain the Software direct from 3CP or through a distributor or agent of 3CP.

**You** means you, the end user of the Software and includes any employee, contractor or other person under your control who uses the Software and **Your** has a corresponding meaning.

**Version** means a version of any of the Software that provides major new functionality compared with the previous version of that Software.

## 7. Interpretation

In this licence, except where the context otherwise requires:

- (1.a) the singular includes the plural and vice versa, and a gender includes other genders;
- (1.b) another grammatical form of a defined word or expression has a corresponding meaning;
- (1.c) a reference to a party is to a party to this licence, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (1.d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (1.e) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (1.f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this licence or any part of it.

## 8. Grant of licence for Software

### 8.1 Licence for Software

3CP grants to You a personal, non-exclusive, non-transferable, licence to install and use the Software on a single server and otherwise only in accordance with the terms of this licence.

### 8.2 Restrictions on use

You must:

- (2.a) not use the Software for any unlawful purpose;
- (2.b) not copy all or part of the Software, or allow all or part of the Software to be copied;
- (2.c) not publish, distribute or commercialise all or part of the Software, or any adaptation, modification or derivative of the Software;

- (2.d) not sell, rent, lease, license, assign or transfer all or part of the Software or any of its rights under this licence;
- (2.e) not use the Software for the benefit of any third party, or disclose the Software to any third party;
- (2.f) not modify, translate, adapt, reverse engineer, decompile, disassemble the Software or create derivative works based on the Software (other than to the extent permitted by applicable copyright laws); and
- (2.g) comply with any reasonable directions of 3CP from time to time in relation to the installation or use of the Software.

## **9. Intellectual property**

### **9.1 Intellectual Property Rights**

Nothing in this licence assigns any Intellectual Property Rights owned by 3CP to You or to any other person.

### **9.2 Proprietary markings, trade marks and trade names**

You must not:

- (2.a) alter or remove any notices of copyright, trade secret, trade mark or other proprietary rights, any rights management information or any serial numbers appearing on, attached to or incorporated in the Licensor IP or any copies thereof; or
- (2.b) use or attempt to register any trade mark, trade name, business name or company name which is confusingly similar to any trade mark or trade name of 3CP.

### **9.3 Violations of Intellectual Property Rights**

You must notify 3CP immediately if You know of or suspect any unauthorised use, or violation, of any Licensor IP.

## **10. Exclusions and limitations**

### **10.1 Exclusion of warranties**

3CP makes no express representations or warranties in relation to the Software.

### **10.2 Exclusion of implied terms**

- (2.a) Except for any liability or implied condition or warranty the exclusion or limitation of which would contravene any statute or cause any part of this clause Exclusions and limitations to be void (**Non-Excludable Term**), 3CP excludes from this licence all terms and liabilities implied or imposed by law or custom.
- (2.b) To the extent permitted by law, 3CP's liability for any breach of any Non-Excludable Term (other than a condition or warranty implied by any statute which cannot be limited in accordance with this clause) is limited to:
  - (2.b.i) in the case of services, the resupply of the services or the cost of having the services supplied again (at 3CP's option); and
  - (2.b.ii) in the case of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

### **10.3 Exclusion of liability**

To the extent permitted by law:

- (3.a) 3CP excludes any and all liability for Damages suffered or incurred by You in connection with this licence or the use of the Software.
- (3.b) in no event will 3CP be liable to You or any Customer for any Damages caused by or arising from, whether directly or indirectly, any of the following:
  - (3.b.i) any malfunctions, failures or errors in programming, latent or otherwise, in relation to the Software;
  - (3.b.ii) any failure, malfunction or defect of any software, hardware, electronic or mechanical equipment or telecommunication channels or connections;
  - (3.b.iii) any delay or failure by 3CP or its operators in acting on an order or instruction from You;
  - (3.b.iv) the inaccuracy or incompleteness of any information provided by 3CP, You or any third party;
  - (3.b.v) the provision, storage, relay or use of any information by 3CP;
  - (3.b.vi) any delays, interruptions, errors or omissions in 3CP collecting, recording, processing, storing or disseminating information;
  - (3.b.vii) any failure by You to perform Your obligations under this licence in whole or in part, or in a timely manner;
  - (3.b.viii) any failure by 3CP to make available information, materials, software, hardware, equipment and personnel whether or not required under this licence; or
  - (3.b.ix) any conduct, whether or not negligent or unlawful, by or on behalf of You or any of Your employees, representatives, agents or contractors.
- (3.c) 3CP excludes all liability (including liability for negligence) for any Consequential Losses in connection with this licence or the use of the Software.

### **10.4 Limitation of liability**

To the extent permitted by law, the total aggregate liability (including liability for negligence) of 3CP for all Claims and Damages in connection with this licence or the use of the Software is limited to the actual price You paid for this licence.

### **10.5 Indemnity**

- (5.a) You agree and undertake to indemnify and keep indemnified 3CP from and against any and all Damages to which 3CP becomes subject at any time arising out of, or in connection, with:
  - (5.a.i) Your breach of this licence;
  - (5.a.ii) Your use of the Software; or
  - (5.a.iii) any:
    - (5.a.iii.A) act or omission of You (whether directly or indirectly);

- (5.a.iii.B) act or omission by You relating to (whether directly or indirectly) any of Your obligations under this licence; and
  - (5.a.iii.C) legal or administrative action brought by any person in any forum, including arbitration, reparations, exchange or self-regulatory proceedings, and governmental agency administrative actions arising out of concerning any one or more of the matters specified in clauses Your breach of this licence; to any:.
- (5.b) All Damages incurred by 3CP arising out of, or in connection with, any matter described in clause You agree and undertake to indemnify and keep indemnified 3CP from and against any and all Damages to which 3CP becomes subject at any time arising out of, or in connection, with: must be paid or reimbursed by You, as required by 3CP promptly on demand, including legal fees on a full indemnity basis and any other costs and expenses incurred in connection with:
- (5.b.i) the investigation of, preparation for or defence of, any pending, threatened or actual litigation or claim or regulatory investigations or enquiry within the terms or the indemnity set out in paragraph You agree and undertake to indemnify and keep indemnified 3CP from and against any and all Damages to which 3CP becomes subject at any time arising out of, or in connection, with: or any matter incidental to such litigation, claim investigation or enquiry, whether or not resulting in any liability; or
  - (5.b.ii) the enforcement by 3CP of its rights against You under this licence.

## **11. Termination**

### **11.1 Termination rights**

3CP may terminate this licence, or otherwise limit or deny Your use of the Software, without notice to You if You:

- (1.a) commit any breach of this licence; or
- (1.b) otherwise do anything to compromise or threaten (in 3CP's sole opinion) the operation or otherwise of the Software.

### **11.2 Consequences of termination**

On termination of this licence You must:

- (2.a) cease using the Software; and
- (2.b) if required by 3CP, return to 3CP or destroy (at 3CP's option) all copies of the Software (whether or not made in accordance with the provisions of this licence) and any documentation relating to the Software (**Materials**) and all copies of the Materials, including all revisions, enhancements and upgrades.

## **12. Force Majeure**

3CP will not be liable for any delay or failure to perform its obligations pursuant to this licence if such delay is due to Force Majeure. If a delay or failure by 3CP to perform its obligations due to Force Majeure exceeds five Business Days, 3CP may immediately terminate this licence without liability to You or any other person.

## **13. Miscellaneous**

### **13.1 Assignment**

You may not assign this licence (or any right under it) or purport to novate Your obligations under this licence to any other person.

### **13.2 Survival**

Any indemnity or any obligation of confidence under this licence is independent and survives termination of this licence . Any other term by its nature intended to survive termination of this licence survives termination of this licence, including clauses This End User Licence Agreement (EULA) constitutes an agreement between You and 3CP. This EULA governs your use of the Software. , Exclusions and limitations, Consequences of termination, and Miscellaneous.

### **13.3 Entire agreement**

This licence constitutes the entire agreement between the parties in connection with the Software or its use.

### **13.4 Severability**

A term or part of a term of this licence that is illegal or unenforceable may be severed from this licence and the remaining terms or parts of the terms of this licence continue in force.

### **13.5 Waiver**

3CP does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by 3CP.

### **13.6 Governing law and jurisdiction**

This licence is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of New Zealand.

# **‘Build on Budget’ Terms and Conditions of Use of Products and Services**

## **User’s Acknowledgment and Acceptance of Terms**

3CP Limited (**3CP**) provides Users of 3CP’s application and website (an **‘App’** or **‘Website’** respectively and together **‘Products’**) with information and access to Services.

By using our App or Website as a visitor or as a subscriber to our Services you agree to be bound by the terms and conditions appearing in this document and as posted on the Website.

Additional contractual terms may apply to some Services so it is important that you are familiar with all of the terms applying to your use of our Products and Services.

3CP reserves the right to amend these Terms and Conditions of Use at any time without notice to you. You acknowledge and agree that it is your responsibility to check these Terms and Conditions of Use from time to time and familiarise yourself with them.

Any new features that augment or enhance the existing Products and/or Services, including the release of new tools or resources, shall be subject to these Terms and Conditions of Use and the failure of 3CP to exercise or enforce any right or provision of these Terms and Conditions of Use shall not constitute a waiver of such right or provision.

## **Definitions**

**‘3CP/We/Us/Our’** means 3CP Limited;

**‘You/Your/Yourself/User’** means the Person visiting and/or using our Website, visiting and/or using our App and/or subscribing to our Services;

**‘Content’** means material produced by You through use of the Services;

**‘Account’** means your account registered with 3CP;

**‘Account Holder’** means the Person registered with 3CP in respect of an Account who is responsible for the administration of the Account, including payment of the Subscription Fee(s);

**‘EULA’** means End-User Licence Agreement governing use of the BoB software;

**‘Person’** means legal person or organisation;

**‘Products’** means each of and together, 3CP’s BUILD ON BUDGET (**‘BoB’**) App and Website;

**‘Revival Fee’** is the amount payable to 3CP to revive an Account;

**‘Service Availability’** is defined as the ability to access and use the Products and Services;

**‘Services’** means the BoB services provided by 3CP to the Account Holder via the App and/or Website;

**‘Subscription Fee/Subscription Fees’** means the amount payable by the Account Holder in relation to access to, and use of, the Products and Services;

**‘Subscription Plan’** means the payment terms relating to the Subscription Fees;

**‘Terms and Conditions of Use’** means the terms and conditions of use relating to the Products and Services; and

**‘Website’** means the website located at [www.buildonbudget.co.nz](http://www.buildonbudget.co.nz).

## **Access and Use**

3CP grants you a limited, exclusive licence to access and use the Products and Services in connection with your Account and in accordance with the EULA. For the avoidance of doubt, a User cannot assign this licence. Sharing, redistribution or simultaneous use of this licence is prohibited.

Your use of the Products and Services is subject to all applicable laws and regulations, and you are solely responsible for your use of the Products and Services.

When registering to access and use the Products and Services you must provide your full name, a valid email address, password and any other information requested by 3CP in order to complete the registration process and create an Account.

You are responsible for maintaining the security of your Account, including keeping your password secure. 3CP will not be liable for any loss or damage from failure to comply with this security obligation. We recommend the use of password management software to keep your password safe.

You may not use your account for any illegal or unauthorised purpose. You must not, in the use of the Products and Services, violate any laws in your jurisdiction (including, but not limited to copyright laws).

## **Termination and Suspension of Account**

3CP reserves the right to terminate an Account for non-payment of Subscription Fees. 3CP further reserves the right to suspend or de-activate an Account without notice to the Account Holder. Discretion will be used in exercising these rights.

Account Holders may terminate the Account upon written notice to 3CP.

When terminating an Account, the Account and any Content created by the Account Holder will no longer be accessible to the Account Holder.

## **Deactivation and Archiving**

Account Holders may de-active their Account at any time. De-activation renders their Account and all Content linked to that Account inaccessible until such time as the Account is revived upon application to 3CP and payment of the Revival Fee.

## **Revival**

Revival of an Account is possible upon written application to 3CP and payment of a Revival Fee.

## **3CP Account Billing, Invoicing and Refunds**

Upon creation of an Account, you must choose a Subscription Plan, which determines the appropriate Subscription Fee payable and payment term.

Account Holders must register a valid credit card with the Account which 3CP will charge for Subscription Fee invoices as they fall due.

All new Account Holders are granted a free fourteen (14) day trial period for their Subscription Plan.

If, as an Account Holder, you wish to cancel or change your Subscription Plan (whether before or after a trial period), you can do so upon written notice to 3CP.

When a Subscription Fee falls due for payment (as defined by the Subscription Plan payment term), 3CP will generate an invoice addressed to the Account Holder. The invoice will be provided to the Account Holder by email.

At the time the invoice is generated, 3CP will attempt to charge the credit card registered against the Account for the invoiced amount.

If an invoice is not paid within fourteen (14) days of the date of generation, 3CP will suspend the Account and revoke all access to Content belonging to the Account (excluding any data necessary for invoicing and payment purposes).

If an Account is suspended for non-payment of an invoice, the Account Holder may, at any time, register an additional valid credit card with that Account to pay for the overdue invoice. Once the invoice has been paid, the Account shall be unsuspended and full access to the Account shall be restored.

An Account Holder may change the Subscription Plan at any time. However, a trial period will not be granted in relation to this subsequent Subscription Plan, and any remaining trial period on the initial Subscription Plan will be forfeit.

Subscription Plans are invoiced to Account Holders in advance in accordance with the term of the Subscription Plan and are non-refundable.

All Subscription Fees charged are inclusive of G.S.T.

### **Modifications to the Service and Subscription Fees**

3CP reserves the right at any time to modify or discontinue the Services (or any part thereof) with or without notice.

3CP reserves the right to periodically review and adjust Subscription Fees. Notice will be given at least thirty (30) days in advance of any changes to Subscription Fees.

3CP reserves the right to make updates and upgrades to 3CP Products and Services at 3CP's discretion.

### **Service Availability and Support**

3CP aims to provide a high level of Service Availability. However, in the event of an outage or other technical infrastructure issue, 3CP will not be liable for any losses, including, without limitation, data loss. 3CP will endeavour to restore availability in a timely manner.

While 3CP will make all efforts to prevent any disruption to Service Availability during scheduled upgrades, there may be times where Products and/or Services are inaccessible.

3CP is committed to providing excellent customer service. We aim to answer most support queries within 24 hours. However, 3CP makes no guarantee as to the period of time before support is provided.

## **Intellectual Property Rights**

All aspects of the Products, including, but not limited to, source code and the look and feel is owned by 3CP. You may not duplicate, copy or reuse any portion of the source code or design elements without express written permission from 3CP.

3CP does not own, and makes no claim to ownership of any Content created in an Account.

## **Data Loss & Backups**

3CP disclaims all liability for the loss of customer data through your general use of the Products and Services, malicious acts or infrastructure failure.

3CP will be responsible for ensuring regular backups of customer data.

## **Indemnity**

You agree to indemnify and hold harmless 3CP, its subsidiaries, affiliates, directors, shareholders, agents, and employees, from and against any claims, damages, costs, liabilities and expenses (including, but not limited to, reasonable legal fees) arising out of or related to your use of our Products and Services or in relation to any Content, including, without limitation, any actual or threatened demand or claim made against 3CP, its subsidiaries, affiliates, directors, shareholders, agents, and employees made by any third party due to your use of our Products and Services or in relation to any Content, or your breach of these Terms and Conditions of Use, any applicable law or the rights of a third party.

## **Disclaimer**

Except as expressly provided to the contrary in writing by 3CP, the Products and Services are provide on an 'as is' or 'as available' basis without warranties of any kind, express or implied. 3CP disclaims all other warranties, express or implied, including, without limitation, implied warranties that:

- the Services will meet your specific requirements;
- the Services will be uninterrupted, timely, secure, or error-free; or
- the results that may be obtained by the User of the Services will be accurate.

## **Limitation of Liability**

In no event shall 3CP, its subsidiaries, affiliates, directors, shareholders, agents, and employees be liable for any direct, special, indirect, consequential or exemplary damages, including, but not limited to loss of use, profit, goodwill or data, whether in an action for contract, tort (including but not limited to negligence) or otherwise, arising out of, or in any way connected with the use of the Products and Services or Content, including, but not limited to:

- your use or inability to use the Products and/or Services; or
- unauthorised access to or alteration of your transmissions of data.

## **Privacy Policy – Data**

Please refer to our Privacy Policy for information on how 3CP collects, uses, discloses and stores personally identifiable information from Users.

## **Privacy Policy – Payment Transactions**

You acknowledge and agree that credit card transactions conducted through the App and/or Website will be processed using a third party and, in connection with such payment transactions, your Personal Information including Personal Information relating to your credit card account will be transmitted to such third party. By submitting your credit card information in connection with a payment transaction, you authorise 3CP or such third party to charge your credit card for the amount indicated and agreed upon.

## **Governing Law**

These Terms and Conditions of Use shall be governed by and construed in accordance with the laws of New Zealand. Any dispute arising between you and 3CP in connection to the Products and/or Services will be determined by reference to the laws of New Zealand. You agree and hereby submit to the exclusive jurisdiction of the New Zealand courts.

## **General**

### ***Severability***

If any provision of these Terms and Conditions of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions of Use and shall not affect the validity and enforceability of any other provision of these Terms and Conditions of Use.

### ***Entire Agreement***

These Terms and Conditions of Use constitute the entire agreement and understanding between us concerning the Products and Services and supersedes all prior agreements and understandings of the parties with respect to the Products and Services. These Terms and Conditions of Use may only be amended by 3CP.

### ***Non-Assignment***

You may not assign your rights and obligations under these Terms and Conditions of Use to any party, and any purported attempt to do so will be null and void. 3CP may freely assign its rights and obligations under these Terms and Conditions of Use.

### ***Notices***

All notices to a party shall be in writing and shall be made via email or conventional mail. Notices to 3CP must be sent to **3cpltd@gmail.com** or to **3CP Limited, 204 Archers Road, Glenfield, Auckland 0629, New Zealand.**