

# ASTM License Agreement for SpecBuilder

This ASTM License Agreement for SpecBuilder is by and between ASTM International with a registered address at 100 Barr Harbor Drive, West Conshohocken, PA 19428 USA (“**ASTM**”) and Customer (as defined in the applicable order form) (“**Customer**”) (the “**Agreement**”). By signing the applicable order form to which this Agreement is incorporated, Customer is agreeing to the following terms and conditions. For purposes of clarity, the Agreement shall also include the ASTM Privacy Policy located at the following link: <https://www.astm.org/policies/privacy-policy>. Such parties are hereinafter referred to collectively as the “Parties” or individually as a “Party”.

## 1. Definitions.

- A. “**ASTM Product**” means SpecBuilder.
- B. “**Authorized User**” means an individual user who is authorized by Customer (by Customer providing a user identification and password for such Authorized User) and for whom a License was purchased, to access and use the ASTM Product during the License Period. Authorized Users must be an individual human being and shall not be any form of artificial intelligence, machine learning, or bot. Authorized Users may include Customer employees, contractors, and members.
- C. “**Ballot**” is a formal voting mechanism used by a Group to gather votes regarding the approval, revision, or reaffirmation of standards, guidelines or other technical content.
- D. “**Customer Data**” means all electronic content submitted by or on behalf of the Customer into and for use within the ASTM Product.
- E. “**Draft**” means a document with technical specifications that is drafted by a particular Group which is pre-loaded for interactions between Authorized Users prior to Balloting
- F. “**Group**” means a group or committee of Authorized Users composed of technical experts, professionals, and stakeholders from various industries who are responsible for developing and maintaining standards, guidelines, and best practices in specific fields or for particular types of materials, products, systems, or services.
- G. “**SpecBuilder**” means the ASTM proprietary platform that facilitates collaboration, document development, and Ballot for documents such as standards, specifications, test methods, guidelines, and procedures.
- H. “**Terms of Use**” means the terms and conditions that each Authorized User must accept prior to accessing the ASTM Product.

## 2. License.

Subject to the payment of the License Fees outlined in the applicable order form, ASTM grants Customer a limited, world-wide, revocable, non-exclusive, non-transferable, license to use the ASTM Product during the License Period (as defined in Section 4 of this Agreement) and subject to the terms of this Agreement and the applicable order form (the “**License**”). The License is based on combination of the quantity of the following parameters in the ASTM Product (as outlined in the order form): Authorized Users, Groups, Ballots, and Drafts. If Customer’s quantities for any of the aforementioned parameters exceeds the Customer’s License (as set forth in the applicable order form) at any point during the License Period, Customer may be subject to additional License Fees as determined by ASTM.

ASTM shall use reasonable efforts to make the ASTM Product available on a continuous basis. Availability will be subject to periodic interruption and downtime for server maintenance, software installation or testing, loading new files, and reasons beyond the control of ASTM. ASTM does not guarantee access and will not be liable for damages if the ASTM Product becomes unavailable temporarily, or if access becomes slow or incomplete due to system back-up procedures, Internet traffic volume, upgrades, overload of requests to servers, general network failures or delays, or any other cause that may from time to time make the ASTM Product unavailable for the Customer or Customer’s Authorized Users. Under this Agreement, Customer explicitly allows ASTM support resources to access Customer’s account of the ASTM Product only for the following purposes: (i) to provide technical support (and any associated corrective action) for Customer’s account, (ii) for purposes of any form of potential breach of this Agreement, including but not limited to verifying Customer licensing.

#### **A. Prohibited Uses.**

- (i) This License describes all permitted uses. Any other use is prohibited, is a violation of this Agreement and can result in immediate termination of the License.
- (ii) An Authorized User may not make the ASTM Product available to anyone other than another Authorized User, whether by Internet link, or by permitting access through his or her terminal or computer; or by other similar or dissimilar means or arrangements.
- (iii) Except as expressly stated in this Agreement, Customer and its Authorized Users may not: (a) sublicense, resell, rent, lease, or otherwise transfer rights to the ASTM Product; (b) allow unauthorized access to or use of the ASTM Product, or create any derivative works of the ASTM Product; (c) use the ASTM Product for any unlawful or illegal purposes, or for creating competing products; (d) remove, alter, or obscure any copyright or proprietary notices; (e) incorporate the ASTM Product into other products (including but not limited to any artificial intelligence or machine learning product) without ASTM's Vice President of Sales & Marketing's express written permission; (f) reverse engineer or attempt to derive the source code of the ASTM Product; (g) use the ASTM Product to store or transmit harmful or infringing content; or (h) allow any unauthorized third party to access or use the ASTM Product.
- (iv) Except as expressly permitted in this Agreement, the Customer may not use or access the ASTM Product for any purpose such as reselling the ASTM Product. Customer also may not charge Authorized Users any additional fees for accessing or using the ASTM Product, other than the License fees specified in the applicable order form.
- (v) If Customer or Authorized Users materially breaches the License or makes prohibited uses of material in the ASTM Product, ASTM reserves the right to deny Customer and Authorized Users any access to the ASTM Product, in ASTM's sole discretion.
- (vi) Prohibition of Explicit Content. Customer and Authorized Users are strictly prohibited from uploading, submitting, or otherwise placing any explicit, obscene, pornographic, or offensive content into the ASTM Product. Customer agrees to ensure that all content uploaded or submitted by Authorized Users complies with applicable laws and regulations. Violation of this prohibition may result in immediate suspension or termination of the Customer and its Authorized User's access to the ASTM Product, in addition to any other remedies available to ASTM under this Agreement or applicable law.

#### **B. Detection of Prohibited Uses and Unauthorized Access.**

- (i) Customer is fully responsible and liable for all Authorized Users compliance with this Agreement and the applicable order form. Customer is further responsible for taking reasonable measures to prevent prohibited uses, and promptly notify ASTM of any infringements of proprietary rights or prohibited use of which Customer becomes aware. Customer will cooperate with ASTM in investigating any such prohibited uses and will take reasonable steps to ensure the cessation of such activity and to prevent any reoccurrence.
- (ii) Authorized Users will be required to accept the Terms of Use of the ASTM Product.
- (iii) Customer shall use all reasonable efforts to protect the ASTM Product from any use that is not permitted under this Agreement and shall notify ASTM of any use of which it learns or is notified.
- (iv) Customer must immediately notify ASTM of any known or suspected unauthorized use(s) of its password(s), or any known or suspected breach of security, including the loss, theft or unauthorized disclosure of such password or any unauthorized access to or use of the ASTM Product. Customer is solely responsible for maintaining the confidentiality of its password(s) and for ensuring the authorized access and use of the ASTM Product. Authorized Users credentials and passwords may not be shared.

### **3. Fees and Payments.**

- A. Fees.** Customer shall pay all fees specified in the applicable order form. Except as otherwise specified herein or in an order form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the License purchased cannot be decreased during the License Term stated on the order form.
- B. Payment Terms.** Fees are due within 30 days of the invoice date. If any amounts are not received by the due date, ASTM may charge interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is higher.

- C. Taxes. Customer must pay any applicable taxes, other than taxes on ASTM's net income, arising out of Customer's use of the ASTM Product and/or rights granted under this Agreement.
- D. Customer Purchase Orders. In the event that a Purchase Order ("PO") is submitted by Customer in conjunction with an applicable order form, quote or proposal provided by ASTM to Customer, it is hereby expressly agreed and understood that any terms and conditions contained within such PO shall be deemed null and void and shall have no binding effect on the Parties.

- (i) Any delays in payment resulting from issues with Customer's internal payment portal are the sole responsibility of Customer, who remains obligated to fulfill payment as agreed and outlined above.
- (ii) It is Customer's responsibility to provide accurate billing contact information to ensure proper delivery of the invoice.
- (iii) Invoices that remain unpaid for more than 100 days will result in immediate suspension of Customer's access to the ASTM Product until full payment is received. Accounts placed on suspension will automatically enter a probationary period and will forfeit net payment term privileges for a period of one year.

#### 4. Terms and Termination.

- A. Term. The term of this Agreement is set forth in the applicable order form under which the License was purchased ("**License Period**"). Access to the ASTM Product is for the License Period only. This Agreement will remain in effect thereafter for successive License Periods so long as annual License fees, as such may change from time to time, are paid.
- B. Termination for Cause. Either Party may terminate this Agreement immediately upon written notice if the other Party materially breaches any provision of this Agreement and fails to cure such breach within 30 days after receiving written notice of the breach.
- C. Effect of Termination. Upon termination or expiration of the License Period, Customer and its Authorized Users' access to the ASTM Product will be terminated, and Customer (including Customer's Authorized Users) will immediately cease all use of the ASTM Product. Any outstanding payments due to ASTM at the time of termination will be payable in accordance with the terms of this Agreement.
- D. Survival. The provisions of this Agreement that by their nature are intended to survive termination or expiration, including but not limited to sections related to Confidential Information, Proprietary Rights, and Limitation of Liability, shall survive the termination or expiration of this Agreement.

#### 5. Proprietary Rights.

- A. ASTM Proprietary Rights. ASTM retains all right, title and interest in and to the ASTM Product (and any derivatives thereof) and ASTM Confidential Information. In addition, ASTM owns any performance data and usage data in the ASTM Product. All rights related to the ASTM Product that are not explicitly granted to the Customer in this Agreement are reserved by and for ASTM.
- B. Suggestions. For any suggestions, enhancements, recommendations or other feedback relating to the ASTM Product ("**Suggestions**"), Customer grants to ASTM a royalty-free, fully paid, worldwide, transferable, sublicensable, irrevocable, perpetual right and license to use, copy, modify, analyze and distribute the Suggestions including incorporation into the ASTM Product.
- C. Customer Data Ownership and Security. Customer retains all rights, title, and interest in and to all Customer Data. ASTM acknowledges that it is solely the Customer's responsibility to ensure the legality, reliability, and integrity of Customer Data uploaded to the ASTM Product. ASTM will implement and maintain commercially reasonable safeguards to protect the confidentiality, integrity, and availability of Customer Data. In the event of a security breach involving Customer Data, ASTM will promptly notify the Customer in accordance with applicable laws and regulations.
- (i) Customer Data Backup and Retention. ASTM will back up Customer Data in accordance with its data management policies and will retain such data for the duration of the License Period and as required by applicable laws. Upon termination or expiration of the License Period, ASTM will retain Customer Data for a period of 30 days to allow for retrieval by the Customer, after which the Customer Data will be securely deleted, unless otherwise required by law or agreed upon by the Parties.

## 6. Confidential Information.

**"Confidential Information"** means any information disclosed by either Party (**"Disclosing Party"**) to the other Party (each, a **"Receiving Party"**), either directly or indirectly, in writing, orally or by inspection of tangible objects (including, without limitation, trade secrets, specifications, designs, documents, correspondence, software, documentation, data, and other materials and work products produced by either Party), which is designated as "Confidential," "Proprietary" or some similar designation. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession; or (vi) is required by law to be disclosed by the Receiving Party, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

During the term of this Agreement, each Party may disclose to the other certain Confidential Information to the other Party. Except as expressly provided in this Agreement, the Receiving Party will not use or disclose any Confidential Information of the Disclosing Party without the Disclosing Party's prior written consent, except disclosure to and subsequent uses by the Receiving Party's employees or contractors on a need-to-know basis. Subject to the foregoing nondisclosure and non-use obligations, the Receiving Party agrees to use at least the same care and precaution in protecting such Confidential Information as the Receiving Party uses to protect the Receiving Party's own Confidential Information and trade secrets, and in no event less than reasonable care.

All Confidential Information disclosed by either Party to the other Party shall be and remain the property of the Disclosing Party. The Receiving Party shall use commercially reasonable efforts to return or delete Disclosing Party's Confidential Information that Receiving Party is in possession of, upon the Disclosing Party's written request. The Receiving Party shall have no obligation to delete or destroy copies that: (a) are contained in an archived computer system backup that was made in accordance with such Party's security, e-mail retention, and/or disaster recovery procedures; or (b) are kept by its legal department for record-keeping, archival, or governance purposes in compliance with such Party's document retention policies. Any such retained Confidential Information shall remain subject to the terms and conditions of this Agreement for so long as it is retained. Notwithstanding the return or destruction of the Confidential Information, the Receiving Party will continue to be bound by its confidentiality and other obligations hereunder in accordance with the terms of this Agreement. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this section.

## 7. Verification.

ASTM reserves the right to audit the Customer's usage of the ASTM Product to verify compliance with the terms of this Agreement, including but not limited to the scope of use, number of users, and payment of applicable fees. Such audit may include a review of usage logs, access records, and other relevant data stored within the ASTM Product. Customer agrees to cooperate fully with any such audit. If the audit reveals any underpayment or breach of the License terms (inclusive of this Agreement and the order form), Customer shall promptly remedy such breach, including payment of any unpaid fees with interest, and shall reimburse ASTM for the reasonable costs of the audit if such breach or underpayment exceeds 5% of the applicable fees. By invoking this procedure, ASTM does not waive any of its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

## 8. Disclaimer of Warranty.

Unless specified in this Agreement, all express or implied conditions, representations and warranties,

including any implied warranty of merchantability, fitness for a particular purpose or non-infringement are disclaimed, except to the extent that these disclaimers are held to be legally invalid.

## 9. Indemnification.

- A. Customer Indemnification.** Customer agrees to indemnify, defend, and hold harmless ASTM, its affiliates, and their respective officers, directors, employees, and agents from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to (a) Customer's use of the Licensor Product in violation of this Agreement, (b) Customer Data, or (c) any breach of this Agreement by Customer or its Authorized Users.
- B. Licensor Indemnification.** Licensor agrees to indemnify, defend, and hold harmless Customer, its affiliates, and their respective officers, directors, employees, and agents from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to any claim that the Licensor Product, as provided and used in accordance with this Agreement, infringes any third-party intellectual property rights.

## 10. LIMITATION OF LIABILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY, ONE TO THE OTHER, BE LIABLE FOR ANY LOSS, DAMAGE, LOST DATA OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE OF THE ASTM PRODUCT. EXCEPT WITH REGARDS TO FRAUD, GROSS NEGLIGENCE OR WILLFUL OR INTENTIONAL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S LIABILITY EXCEED THE AMOUNT PAID BY CUSTOMER IN THE PRECEDING TWELVE (12) MONTHS FROM WHEN THE CLAIM WAS SUBMITTED TO EITHER PARTY UNDER THIS AGREEMENT.

## 11. General.

- A. Governing Law, Venue, and Jurisdiction.** This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania. Customer agrees to submit to jurisdiction and venue in the state and federal courts of Pennsylvania for any dispute which may arise under this Agreement. Customer also agrees to waive any claim of immunity it may possess.
- B. Entire Agreement.** This Agreement (inclusive of the order form) is the entire agreement between Customer and ASTM relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter during the term of this Agreement. This Agreement may be updated from time to time by ASTM and will be presented to Customer.
- C. Order of Precedence.** In the event of a conflict or inconsistency, the following order of precedence shall apply:
- (i) The applicable Order Form (including any mutually agreed addenda thereto),
  - (ii) The ASTM License Agreement for SpecBuilder,
  - (iii) The ASTM Terms of Use, and
  - (iv) The ASTM Privacy Policy and any other policies or documents incorporated by reference.

For clarity: (a) The License Agreement governs the rights, responsibilities, and obligations of the organization that has purchased access to the Platform, including all commercial terms, license scope, and payment obligations; and (b) the Terms of Use govern the individual conduct of all end users accessing the Platform. In the event that a purchase order ("PO") is submitted by Customer in conjunction with an applicable Order Form, any terms and conditions contained in such PO shall be deemed null and void and shall have no binding effect on the Parties.

- D. Assignment.** Customer may not assign or transfer its rights under this Agreement without the prior written permission of ASTM.
- E. Force Majeure.** Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement if such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, natural disasters, pandemics, war, terrorism, civil disturbances, or government actions. In such an event, the affected Party shall promptly notify the other Party, and the time for performance may be extended for a period equal to the duration of the force majeure

event (unless otherwise agreed to by the Parties).

- F. EEO. ASTM is an equal opportunity employer and federal contractor or subcontractor. As applicable, the Parties agree that they shall abide by the requirements of 41 CFR Section 101.4(a); 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements, and that these requirements are incorporated herein. Section 60-300.5 and 60-741.5 require that covered prime contractors and subcontractors ensure nondiscrimination and take affirmative action in employment to employ and advance qualified individuals without regard to their physical or mental disability and protected Veteran status.**