

TERMS AND CONDITIONS AGREEMENT

Effective Date: May 24, 2017

The following Buildertrend Terms and Conditions Agreement (“Agreement”) governs your use of the software and services provided by Buildertrend Solutions, Inc. (“Buildertrend”). This is a legal agreement between you and Buildertrend and incorporates the Privacy Policy and Cookie Policy.

By registering your use of the Service (as defined below), you are accepting to be bound to the terms of this Agreement.

1. Definitions

- (a) “Administrator” shall mean a Subscriber with authority to designate additional Authorized Users and/or Administrators.
- (b) “Agreement” shall mean this entire Agreement and incorporates by reference the [Privacy Policy](#) and [Cookie Policy](#).
- (c) “Authorized User” shall mean an individual subscriber or the partners, members, employees, temporary employees, and independent contractors of an organization with a subscription to the Service who have been added to the account as users.
- (d) “Confidential Information” shall mean the Content (as defined in Section 1(e)) and any information, technical data, or know-how considered proprietary or confidential Buildertrend including, but not limited to, Buildertrend’s research, services, inventions, processes, specifications, designs, drawings, diagrams, concepts, marketing, techniques, documentation, source code, customer information, personally identifiable information, pricing information, procedures, menu concepts, business and marketing plans or strategies, financial information, and business opportunities disclosed by either party before or after the Effective Date of this Agreement, either directly or indirectly in any form whatsoever, including in writing, orally, machine readable form or through access to either party’s premises.
- (e) “Content” shall mean any information you upload or post to the Service and any information provided by you to Buildertrend in connection with the Service, including, without limitation, information about your Authorized Users or Registered Clients, as defined in Section 1(g).
- (f) “Originating Subscriber” shall mean the Subscriber who initiated the Services offered by Buildertrend and is assumed by Buildertrend to have the sole authority to administer the subscription.
- (g) “Registered Client” means an individual who has been invited to use the client-facing features of the Service in a limited capacity as a client of an Authorized User.
- (h) “Service” shall mean any software or services provided by Buildertrend.
- (i) “Subscriber” shall refer to the purchaser of the Services provided by Buildertrend and shall also include any present or former agent, representative, independent contractor, employee, servant, attorney and any entity or person who had authority to act on your behalf.

- (j) “Security Emergency” shall mean a violation by Subscriber of this Agreement that (a) could disrupt (i) Buildertrend’s provision of the Service; (ii) the business of other subscribers to the Service; or (iii) the network or servers used to provide the Service; or (b) provides unauthorized third party access to the Service.

2. Limited License & Use of the Service

- 2.1 Subscriber is granted non-exclusive and limited access to the Service.
- 2.2 Buildertrend does not review or pre-screen the contents of electronic data uploaded or posted to the Service (“Content”) by Authorized Users.
- 2.3 Authorized Users agree not to reproduce, duplicate, copy, sell, resell or exploit access to the Service, use of the Service, or any portion of the Service, including, but not limited to the desktop or mobile user interface, product functionality, other programming elements or any visual design elements without the express written permission from Buildertrend.
- 2.4 Authorized Users agree not to modify, reverse engineer, adapt or otherwise tamper with the Service or modify another website so as to falsely imply that it is associated with the Service, Buildertrend, or any other software or service provided by Buildertrend without the express written consent of Buildertrend.
- 2.5 Authorized Users agree that they will not knowingly use the Service in any manner which may infringe copyright or intellectual property rights or in any manner which is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or in violation of the terms of this Agreement.
- 2.6 Authorized Users agree that they will not knowingly use the Service to upload, post, host, or transmit unsolicited bulk email “Spam”, short message service “SMS” messages, viruses, self-replicating computer programs “Worms” or any code of a destructive or malicious nature.
- 2.7 Except for the non-exclusive and limited access granted pursuant to this Agreement, Subscriber acknowledges and agrees that all ownership, license, intellectual property and other rights and interests in and to the Service shall remain solely with Buildertrend.

- 2.8 Authorized Users who configure the Service to share or make available certain Content to the public, are deemed to acknowledge and agree that everyone will have access to the Content ("Public Content"). Buildertrend reserves the right, at any time, in its sole discretion, to take any action deemed necessary with respect to Public Content that violates the terms of this Agreement, including, but not limited to, removal of such Public Content.
- 2.9 Buildertrend reserves the right at any time, and from time to time, to modify or discontinue, temporarily or permanently, any feature associated with the Service, with or without notice. Continued use of the Service following any modification constitutes Subscriber's acceptance of the modification.
- 2.10 Buildertrend reserves the right to temporarily suspend access to the Service for operational purposes, including, but not limited to, maintenance, repairs or installation of upgrades. Buildertrend may, but is not required, to notify you in advance by way of notification within the Service, email or other notification method deemed appropriate by Buildertrend. Further, Buildertrend shall endeavor to confine planned operational suspensions with a best effort to minimize disruption to the Subscriber, but reserves the ability to temporarily suspend operations without notice at any time to complete necessary repairs. In the event of a temporary suspension, Buildertrend will use the same notification methods listed in this section to provide updates as to the nature and duration of any temporary suspension.
- 2.11 Subscriber grants to Buildertrend a non-exclusive, royalty free right during Subscriber's use of the Service, to use the Confidential Information for the purpose of performing Buildertrend's obligations under the Agreement in accordance with the terms of the Agreement. Such rights shall include permission for Buildertrend to generate and publish aggregate, reports on system usage and Content trends and type, and other rights designated in Buildertrend's [Privacy Policy](#).
- ### 3. Access to the Service
- 3.1 Subscriber is only permitted to access and use the Service if he/she is an Authorized User or a Registered Client. Authorized Users are required to provide their full legal name, a valid email address, and any other information reasonably requested by the Service.
- 3.2 Each Authorized User will be provided with a unique identifier to access and use the Service ("Username"). The Username shall only be used by the Authorized User to whom it is assigned, and shall not be shared with, or used by any other person, including other Authorized Users.
- 3.3 The initial Administrator shall be the Originating Subscriber with authority to administer the subscription and designate additional Authorized Users and/or Administrators. Each subscription may designate multiple Authorized Users as Administrator. Any Administrator shall be deemed to have the authority to manage the subscription and any Authorized Users. The Administrator will deactivate an active Username if the Administrator wishes to terminate access to the Service for any Authorized User.
- 3.4 Administrators are responsible for all use of the Service by Authorized Users on the list of active Authorized Users associated with their subscription to the Service.
- 3.5 As between Buildertrend and the Subscriber, any Content uploaded or posted to the Service remains the property of the Subscriber. Upon Cancellation or Termination of Service, Buildertrend shall only be responsible for the return of Content directly to the Administrator or a designated Authorized User in the event that the Administrator is unable to be reached.
- 3.6 All access to and use of the Service via mechanical, programmatic, robotic, scripted or any other automated means not provided as part of the Service is strictly prohibited.
- 3.7 Authorized Third Party Providers or other authorized integrators may be permitted to access and use the Service using an integration with a third-party company subject to the following conditions:
- (a) any use of the Service using an integration with a third-party company, including the use of an integration through a third-party product that accesses and uses the Service, is governed by these Terms of Service;
 - (b) Buildertrend shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Buildertrend has been advised of the possibility of such damages), resulting from any use of an integration or third-party products that access and use the Service via an integration;
 - (c) Excessive use of the Service using an integration may result in temporary or permanent suspension of access to the Service via an integration. Buildertrend, in its sole discretion, will determine excessive use of the Service via an integration, and will make a reasonable attempt to warn the Authorized User prior to suspension; and
 - (d) Buildertrend reserves the right at any time to modify or discontinue, temporarily or permanently, access and use of the Service via an integration, with or without notice.
- ### 4. Security and Access
- 4.1 Buildertrend is responsible for providing a secure method of authentication and accessing its Service. Buildertrend will provide mechanisms that:
- (a) allow for user password management;
 - (b) transmit passwords in a secure format; and
- 4.2 Subscriber will be responsible for protecting the security of usernames and passwords, or any other codes associated to the Service, and for the accuracy and adequacy of personal information provided to the Service.
- 4.3 Subscriber will implement policies and procedures to prevent unauthorized use of usernames and passwords, and will promptly notify Buildertrend upon suspicion that a username and password has been lost, stolen, compromised, or misused.
- 4.4 At all times, Buildertrend, and any third party vendors and hosting partners it utilizes to provide the Service, will:
- (a) use information security best practices for transmitting and storing your Content, adhering to industry standards;

(b) employ information security best practices with respect to network security techniques, including, but not limited to, firewalls, intrusion detection, and authentication protocols, vulnerability and patch management;

(c) ensure its host facilities maintain industry standards for security and privacy; and

- 4.5 Buildertrend shall report to Subscriber, with all relevant details, any event that Buildertrend reasonably believes represents unauthorized access to, disclosure of, use of, or damage to Content (a "Security Breach"). Buildertrend shall make such report within a reasonable time after learning of the Security Breach.
- 4.6 In the event of a Security Breach, Buildertrend shall cooperate with Subscriber to identify the cause of the breach and to identify any affected Content

5. Legal Compliance

- 5.1 Buildertrend reserves the right to provide the Confidential Information to third parties as required and permitted by law (such as in response to a subpoena or court order), and to cooperate with law enforcement authorities in the investigation of any criminal or civil matter.

6. Payment, Refunds and Subscription Changes

- 6.1 Buildertrend may charge to your credit card or other payment mechanism selected by you and approved by Buildertrend ("Your Account") all amounts due and owing for the Services, including set up fees, hosting fees, overage fees, development fees, or any other fee or charge associated with your use of the Services in United States Dollars (USD). You agree that in the event Buildertrend is unable to collect the fees owed to Buildertrend for the Services through Your Account, Buildertrend may take any other steps it deems necessary to collect such fees from you and that you will be responsible for all costs and expenses incurred by Buildertrend in connection without such collection activity, including collection fees, court costs and attorneys' fees.
- 6.2 Subscribers with paid subscriptions will provide Buildertrend with a valid credit card for payment of the applicable fees. All fees are exclusive of all federal, state, provincial, municipal or other taxes which Subscribers agree to pay based on where the Subscriber is primarily domiciled. In addition to any fees, the Subscriber may still incur charges incidental to using the Service, for example, charges for Internet access, data roaming, and other data transmission charges.
- 6.3 No refunds or credits will be issued for partial periods of service, upgrade/downgrade refunds, or refunds for periods unused with an active subscription, including, but not limited to, instances involving the removal of a Subscriber.
- 6.4 All prices are subject to change upon notice. Such notice may be provided by an e-mail message to the Administrator, or in the form of an announcement on the Service.

- 6.5 Subscriber is responsible for paying all taxes associated with the subscription to the Service. If Buildertrend has the legal obligation to pay or collect taxes for which Subscriber is responsible under this section, the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides Buildertrend with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 6.6 Any and all payments by or on account of the compensation payable under this Agreement shall be made free and clear of and without deduction or withholding for any taxes. If the Subscriber is required to deduct or withhold any taxes from such payments, then the sum payable shall be increased as necessary so that, after making all required deductions or withholdings, Buildertrend receives an amount equal to the sum it would have received had no such deduction or withholding been made.

7. Cancellation and Termination

- 7.1 Administrators are solely responsible for canceling subscriptions. An Administrator may cancel their subscription by providing express written request to such Administrator's assigned Client Service Manager. Cancellations shall not be accepted by any other means.
- 7.2 Buildertrend in its sole discretion has the right to suspend or discontinue providing the Service to any Subscriber without notice for actions that are (a) in material violation of this Agreement, (b) create a Security Emergency, and (c) upon information or belief that a Subscriber or Authorized User is violating the law, or Buildertrend becomes aware that Authorized User is under investigation by a federal or state law enforcement agency.
- 7.3 If (i) Authorized Users use the Service to materially violate this Agreement in a way that does not create a Security Emergency; (ii) Buildertrend provides Subscriber with commercially reasonable notice of this violation; (iii) Buildertrend uses commercially reasonable efforts to discuss and resolve the violation with Subscriber; and (iv) despite the foregoing, the violation is not resolved to Buildertrend's reasonable satisfaction within thirty (30) days of such notice, then Buildertrend reserves the right to suspend or terminate access to the Service.

8. Limitation of Liability

- 8.1 Buildertrend shall not be liable for and Subscriber waives the right to claim any loss, injury, claim, liability or damage of any kind resulting in any way from the Services provided to Subscriber by Buildertrend.
- 8.2 **SUBSCRIBER AGREES THAT THE LIABILITY OF BUILDERTREND ARISING OUT OF ANY CLAIM IN ANY WAY CONNECTED WITH THE SERVICE WILL NOT EXCEED THE TOTAL AMOUNT YOU HAVE PAID FOR THE SERVICE PURSUANT TO THE AGREEMENT WITHIN THE SIX MONTH PERIOD BEFORE THE DATE THE CLAIM AROSE. SUBSCRIBER FURTHER AGREES THAT BUILDERTREND IS NOT AND WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION, ATTORNEY FEES) RELATING TO THIS AGREEMENT. THESE DISCLAIMERS APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WHETHER THOSE DAMAGES ARE FORESEEABLE AND WHETHER BUILDERTREND HAS**

BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF DAMAGES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY BUILDERTREND TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE FROM AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

- 8.3 Subscriber will solely be responsible for any damage and/or loss of Content contained in Subscriber's technology which occurs as a result of Subscriber's electronic equipment and/or Subscriber's computer system.

9. Disclaimer of Warranties

- 9.1 **BUILDERTREND HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO ANY SERVICES PROVIDED BY BUILDERTREND.**
- 9.2 Buildertrend makes no warranty that its services when provided to Subscriber in digital or electronic format will be compatible with Subscriber computer and/or other equipment, or that these Services will be secure or error free. Nor does Buildertrend make any warranty as to any results that may be obtained from the use of the Service.
- 9.3 Buildertrend hereby disclaims all warranties of any kind related to Subscriber's hardware or software beyond the warranties provided by the manufacturer of Subscriber's hardware or software.

10. Indemnification

- 10.1 **Subscriber hereby agrees to indemnify and hold harmless Buildertrend from and against any claim, action, proceeding, loss, liability, judgment, obligation, penalty, damage, cost or expense, including attorneys' fees, which arise from or relate to the following: Authorized Users' breach of any obligation stated in this Agreement, and Authorized Users' negligent acts or omissions. Buildertrend will provide prompt notice to Subscriber of any indemnifiable event or loss. Subscriber will undertake, at Subscriber's own cost, the defense of any claim, suit or proceeding with counsel reasonably acceptable to Buildertrend. Buildertrend reserves the right to participate in the defense of the claim, suit, or proceeding, at Buildertrend's expense, with counsel of Buildertrend's choosing.**

11. Miscellaneous

- 11.1 Subscriber acknowledges and agrees that Buildertrend may use third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service.

- 11.2 Buildertrend may provide the ability to integrate the Service with third party products and services that Subscriber may use at Subscriber's option and risk. Access to and use of any third party products and services are subject to the separate terms and conditions required by the providers of the third party products and services. Subscriber agrees that Buildertrend has no liability arising from Subscriber's use of any integrations or arising from the third party products and services.
- 11.3 Subscriber acknowledges the risk that information and the Content stored and transmitted electronically through the Service may be intercepted by third parties. Subscriber agrees to accept that risk and will not hold Buildertrend liable for any loss, damage, or injury resulting from the interception of information. The Content is stored securely and encrypted. Only Buildertrend, with strict business reasons, may access and transfer the Content and only to provide Subscriber with the Service. Buildertrend will make reasonable efforts to provide notice to Subscriber prior to such access and transfer.
- 11.4 The failure of either party to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 11.5 This Agreement constitutes the entire agreement between Authorized Users and Buildertrend and governs Authorized Users use of the Service, superseding any prior agreements between Authorized Users and Buildertrend (including, but not limited to, any prior versions of this agreement).
- 11.6 Buildertrend reserves the right to amend this Agreement. In the event of material changes to the Agreement, Buildertrend will notify Subscribers, by reasonable means of these changes prior to their enactment. Continued use of the Service by the Subscriber, Authorized User or Originating Subscriber after reasonable notice will be considered acceptance of any new terms.
- 11.7 Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided the assignee has agreed to be bound by all of the terms of this Agreement. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect.
- 11.8 **Governing Law and Venue.** This Agreement and your relationship with Buildertrend shall be governed exclusively by, and will be enforced, construed, and interpreted exclusively in accordance with, the laws of the State of Nebraska and shall be considered to have been made and accepted in the State of Nebraska, USA, without regard to any conflict of law provisions. All disputes under this Agreement will be resolved by a court of the Douglas County District Court, Douglas County, Nebraska, or the federal district court for the District of Nebraska located in Omaha, Nebraska, USA, and Subscribers consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and legal fees.