

END USER LICENSE AGREEMENT AND TERMS AND CONDITIONS OF USE

Last modified: August 1, 2019

This End User License Agreement and Terms and Conditions of Use (this “EULA”) is by and between you individually as well as the organization you represent (collectively, “Customer” or “you”) and Home Builder Solution LLC (“Home Builder,” “we,” or “us”). This EULA, along with the Privacy Policy and any other documents incorporated by reference (collectively, the “Agreement”) govern your access to and use of the website and services found at homebuildersolution.com (the “Site”) and Home Builder’s mobile application (the “App”), including the content, functionality, and services provided on or through the Site and the App (collectively, the “Service”).

This Agreement supplements and, to the extent there is any conflict between them, replaces any end user license agreement imposed by the app store from which you downloaded the App. Please read this Agreement carefully before using the Service. The Site and the App are made available to residents of the United States who have reached the age of majority who agree to be bound by the terms of this Agreement and who satisfy other requirements specific to certain aspects of the Service. Home Builder may revise and update the Agreement from time to time in its sole discretion. All changes shall be effective once posted and apply to access and use of the Service thereafter. Your continued access and use of the Service once the revised Agreement is posted indicates your acceptance of and agreement to such modifications. You should check this page periodically to stay apprised of changes as they are binding on you.

By accessing or using the Service or clicking to indicate you accept this Agreement, you represent that you satisfy the foregoing eligibility requirements and you accept and agree to be bound and abide by the Agreement. IF YOU DO NOT AGREE TO THIS AGREEMENT, OR IF YOU DO NOT MEET THE ELIGIBILITY REQUIREMENTS, YOU MUST NOT DOWNLOAD THE APP OR OTHERWISE ACCESS OR USE THE SERVICE.

1. Limited Permission to Use.

(a) Limited Permission.

- (i) Subject to each and every term and condition of this Agreement, during the term of this Agreement, you may access the unrestricted portions of the Site and allow your computer to store temporarily copies of such materials in RAM incidental to your accessing and viewing those materials and you may store files that are automatically cached by your web browser for display enhancement purposes. You may only make personal, non-commercial use of this area of the Site.
- (ii) Subject to each and every term and condition of this Agreement, and after paying fees and registering as a user, during the term of this Agreement, you may also (i) download, install, and use the App on your mobile device during the term of this Agreement and (ii) access the restricted portion of the Site. You may only use the Service for the limited purpose of managing information about your own construction projects for your personal (the

internal business of the organization you represent), non-commercial use only. The permissions granted above constitute a limited, non-exclusive, non-transferable, revocable license to use the App and the restricted area of the Site (and not a sale of either). Access to and use of the App is limited to use under an authorized account provided by Home Builder. If you downloaded the App from the Apple app store, you may only use the App on your Apple-branded device. Any rights not expressly granted in this Agreement are hereby reserved by Home Builder.

- (b) Limitations. No right, title, or interest in or to the Service or any content on the Service is transferred to you, and all rights not expressly granted are hereby reserved by Home Builder. Any use of the Service not expressly permitted by this Agreement is a breach of this Agreement and may violate copyright, trademark and other laws.

- 2. **Support and Modifications**. Neither Home Builder nor the operator of the store from which you may have downloaded the App has any obligation to update, upgrade, maintain, or support the Service or to continue to offer any functionality. Home Builder may choose to develop and provide updates to the App and/or the Service, which may include upgrades, modifications, bug fixes, patches, error corrections, and/or new features (together with any documentation related to the foregoing, the “Updates”). Updates may change or delete certain features or functionality. Depending on your device settings, when your device is connected to the internet the App may automatically download and install all available Updates or you may receive a notice and be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge that if you do not, the App may not operate properly. You acknowledge and agree that all Updates will be deemed part of the App and the restricted area of the Site and subject to all terms and conditions of this Agreement. Home Builder may modify the content or the Service from time to time, but the content may not be current. Any material on the Service may be obsolete at any given time and Home Builder has no obligation to update content at any time.

- 3. **Restrictions**.

- (a) Copyright Restrictions. Except as expressly permitted in *Section 1(a)* above, you must not copy, reproduce, distribute, sell, lease, modify, adapt, translate, create derivative works from, display, perform, republish, download, store, transmit, disassemble, reverse engineer, decompile, circumvent any anti-piracy technology or features that enforce limitations on use of, or otherwise alter or attempt to discover the source code, object code, or other portion of the App or any other aspect of the Service except to the extent such restrictions are prohibited by applicable law. You shall not remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features protecting the App, restricted areas of the Site, or the Service generally.
- (b) Personal Use. You may only use the Service as permitted under *Section 1(a)* for personal use (if you are an individual) or internal business purposes (if you

represent an organization), but under no circumstances may you use the Service or any aspect of it for a commercial purpose. Without limiting the foregoing, you shall not make the Service available to or use the Service for the benefit of anyone other than yourself. You shall not sell, resell, license, sublicense, distribute, rent, lease, distribute, assign, publish, transfer, or otherwise make the App or the Service available to third parties or via a network capable of being accessed by more than one device, or use the App or the Service in a service bureau or outsourcing offering.

- (c) General. You shall not use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy or confidentiality rights of a third party. You shall not use the Service to store or transmit viruses, Trojan horses, worms, or other malicious code. You shall not interfere with or disrupt the integrity or performance of the Service or other content contained within the Service. You shall not attempt to gain unauthorized access to any portion of the Service, its related systems or networks, or to data stored therein. You shall not permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit. You shall not frame or mirror any part of the Service. You shall not build a product or service competitive with the Service. You shall not reverse engineer, decompile, or disassemble the Service or otherwise attempt to derive the source code from the Service (to the extent such restriction is permitted by law). You shall not use the App or the restricted area of the Site in connection with any hazardous environments or systems (including power generation systems, aircraft navigation or communication systems, transport management systems, safety-critical applications, medical or life-support systems, vehicle operation applications, or any emergency response systems, military aerospace applications, weapons systems, or similar environments). You shall follow the instructions Home Builder provides from time to time with or in connection with the Service (including associated documentation) governing the use of the Service.
- (d) No Disruption. You agree not to (i) use the Service in any manner that could disable, overburden, damage, or impair the Service or interfere with any other user's use of the Service, including their ability to engage in real time activities through the Service, (ii) use any robot, spider, or other automatic device, process, or means to access the Service for any purpose, including monitoring or copying any material on the Service, (iii) use any manual process to monitor or copy material on the Service or for any other unauthorized purpose, (iv) use any device, software, or routine that interferes with the proper working of the Service, (v) introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful, (vi) attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Service, the server on which transmissions through the Service is stored, or any server, computer, or database connected to the Service, (vii) attack the Service via a denial-of-service attack or a distributed denial-of-service attack, (viii) otherwise attempt to interfere with the proper working of the Service or the use and enjoyment of it by others as determined by Home Builder in its sole discretion.

- (e) No Abuse. You shall not use the Service to: (i) engage in any illegal or unauthorized use or any way that violates applicable federal, state, local, or international law or regulations (including without limitation, any laws regarding the export or re-export of data or software to and from the US or other countries); (ii) impersonate any person or entity; (iii) stalk or harass any other person; (iv) harm minors in any way; (v) falsely state or misrepresent your affiliation with another person or entity or to impersonate or attempt to impersonate Home Builder, a Home Builder employee, another user, or any other person or entity, whether by using that person's email address, screen name, or other indicia associated with the foregoing or otherwise or that misleadingly give the impression that they emanate from or are endorsed by Home Builder or any other person or entity if that is not the case; (vi) provide any false or misleading data or materials likely to deceive others; (vii) infringe any patent, trademark, trade secret, service mark, copyright, or other intellectual property right of another person; (viii) access or use the account of another user; (ix) distribute or procure the sending of unsolicited or unauthorized advertising, surveys, contests, promotional materials, "junk mail", "spam", "chain letters", "pyramid schemes", or other messages for any commercial purposes; (x) distribute computer viruses or other code, files, or programs that interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (xi) "hack" or access without permission Home Builder's proprietary or confidential records or those of any other third party; (xii) transmit or promote any libelous, abusive, offensive, harassing, violent, inflammatory, threatening, defamatory, obscene, indecent, sexually explicit, pornographic, or otherwise objectionable materials, materials that promote discrimination on the basis of race, sex, religion, nationality, disability, sexual orientation, or age, materials that violate publicity, privacy, or other rights of a third party, or other materials that could give rise to any civil or criminal liability under U.S. or international law; (xiii) promote any illegal activity or advocate, promote, or assist any unlawful act; (xiv) cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person; or (xv) deploy or use bots, robots, web crawlers, or other similar electronics or computer code to scrub, copy, or capture data.
- (f) IP Notices. You shall not delete or modify any copyright, trademark, or other intellectual property or other proprietary right notices from the Site or the App or any materials found there.
- (g) Third Party Terms. When using the App, you must comply with terms of applicable third party agreements (such as the wireless data service agreement).

4. **Content Standards**. When uploading photos or text, corresponding with Home Builder, or otherwise engaging with interactive features or transmitting content via the Service, you shall comply with all applicable federal, state, local, and international laws and regulations and adhere to Home Builder's content standards, which include compliance with *Section 3(e)* as well as additional content standards Home Builder may publish from time to time.

5. **Monitoring.** Home Builder has the right to monitor the use of the Service, including the content of information uploaded, stored, or transmitted through the Service, and to remove any content posted by you and take any other action with respect to it that Home Builder deems appropriate in its sole discretion. Home Builder may disclose your identity to law enforcement and to any third party who claims material you posted to the Service infringes their right. Home Builder may take appropriate legal action (including referral to law enforcement) for illegal uses of the Service and may terminate or suspend your access and use of the Service for any reason or no reason and for any violation of this Agreement. Without limiting the foregoing, Home Builder may cooperate with law enforcement authorities and/or court orders (including by disclosing your identity and other information). Notwithstanding the foregoing, Home Builder shall have no obligation to review and monitor the use of the Service, including the posting, storing, or transmitting of content to or through the Service. Home Builder shall have no liability for act or inaction it takes in connection with the foregoing.
6. **Access, Use, and Security.**
- (a) Access. Home Builder reserves the right to withdraw or amend the Service and any service or material provided on the Service in its sole discretion without notice. Home Builder shall not be liable if for any reason the Service is unavailable at any time or for any period. From time to time, Home Builder may restrict access to some parts of the Site, or the entire Site, to users, including registered users.
 - (b) Arrangements. You are responsible for making arrangements necessary for you to access the Service and for ensuring that everyone who accesses the Service through your internet connection is aware of this Agreement and complies with it.
 - (c) Registration. To access the Service (or certain parts of it), you may be asked to provide certain registration details or other information. It is a condition of your use of the Service that all information you provide is correct, current, and complete. All the information you provide to register for the Service or otherwise is governed by the Privacy Policy, and you consent to all actions taken with respect to your personal information that are consistent with the Privacy Policy.
 - (d) Security. If you choose, or are provided with a user name, password, or other credentials as part of Home Builder's security procedures, you must treat such information as confidential and must not disclose it to anyone. You acknowledge that your account is personal to you and agree not to provide anyone else with access to it or to the parts of the Service requiring use of your user name, password, or other credentials. You shall notify us immediately if any unauthorized access to or use of your credentials or any other breach of security occurs. You agree to exit from your account at the end of each session and to use caution if accessing the account on a public or shared computer. Home Builder may disable any credentials at any time in its sole discretion for any or no reason if Home Builder believes you have breached this Agreement. You understand that Home Builder cannot and does not guarantee or warrant that files available for downloading from the internet or the Service will be free of viruses or other destructive code. You are responsible

for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to the Service for any reconstruction of any lost data.

7. **Pricing and Payment.** A monthly payment is required for home builders to use the Service and is based on resources required.

8. **Intellectual Property.**

(a) General. The Site, the App, the Service, and all contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, as well as the design, selection, and arrangement of the foregoing) are owned by Home Builder, its licensors, and/or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property and/or proprietary rights laws. Home Builder and its licensors retain all right, title, and interest in and to the App and the Service, including all intellectual property rights arising out or embodied by them.

(b) No Assignment. Use of the App and the restricted area of the Site is licensed, not sold. Customer acquires no ownership interest or other rights in the App or the remainder of the Service under this Agreement except to use the Service in accordance with the restrictions under the terms and conditions of this Agreement.

(c) Trademarks. Home Builder's trade name and its logo are trademarks belonging exclusively to Home Builder, and other names, logos, product and service names, designs, and slogans are trademarks of Home Builder or its licensors. You shall not use any of those marks.

9. **Copyright Infringement.** If you believe your copyrights have been infringed by a user's posting of content through the Service, please see our Copyright Infringement policy.

10. **Confidential Information and Privacy.**

(a) Confidential Information. Customer acknowledges and agrees that the App and the restricted area of the Site contains and processes confidential information proprietary to Home Builder and/or its licensors including without limitation pricing, benchmarking data, know-how, technology, source code, object code, software and computer programming, scripts, xml code, writings, designs, flow charts, databases, discoveries, inventions, creations, processes, methods, procedures, concepts, ideas, trade secrets, copyrights, samples, non-public information about the Service's functionality and features and other information (the "Confidential Information"). Confidential Information may be expressed in oral, written, electronic or other form.

(b) Exclusions and Exemptions. Confidential Information shall not include: (a) information that is or becomes generally known to the public other than through breach of a duty of confidentiality Home Builder; or (b) information that Customer

had in its possession at the time of disclosure and was not acquired from Home Builder or a third party that owed a duty of confidentiality to Home Builder as evidenced by Customer's pre-existing written records. If Customer is required to disclose Confidential Information by virtue of a subpoena, other court order, or other legal requirement, Customer must first give Home Builder prompt written notice of the potential for such disclosure, Customer must limit the disclosure to the narrowest possible disclosure while still complying with the order, and must continue to protect the confidentiality of the Confidential Information. Notwithstanding anything to the contrary in this Agreement, the mere fact that some portion of the Confidential Information may be subject to protection under intellectual property or other laws does not exclude it from the scope of the definition of Confidential Information. Furthermore, the mere fact that some material that is currently within the scope of the definition of Confidential Information becomes known to the general public does not mean that it is not still subject to protection under other law or that other parts of the Confidential Information are no longer confidential.

- (c) No Disclosure or Unauthorized Use. Customer shall not disclose the Confidential Information to any third party or allow any third party to access the Confidential Information. Customer shall protect the Confidential Information from unauthorized access, disclosure, or use at least to the extent and in the same manner Customer protects Customer's own similar information, but in no event shall Customer use less than reasonable methods to protect the confidentiality of the Confidential Information. Customer warrants that Customer's users will comply with the terms of this Agreement. Customer shall not use the Confidential Information for any reason except for Customer's own internal use as expressly permitted in this Agreement. In no event shall Customer use the Confidential Information to compete with Home Builder's interests or in any manner potentially detrimental to Home Builder. Customer acknowledges that ownership of and title to the Confidential Information, as well as any derivative works, improvements upon or modifications to the Confidential Information shall remain at all times with Home Builder and its licensors and that the Confidential Information has value. Without limiting any of the restrictions or obligations imposed on it in this Agreement, Customer acknowledges that the Service is proprietary to Home Builder and that Customer is not entitled to obtain copies or otherwise access the source code (and if it does, it shall safeguard such Confidential Information and not allow it to be used internally or externally for any purpose and shall promptly return the Service program information to Home Builder). When Customer no longer has need of the Confidential Information for the permitted purpose, Customer shall immediately discontinue all use of it and delete it.

- (d) Privacy. When you download the App or visit the Site, Home Builder may use automatic means to collect information about you and your device as well as your use of the Service. You may also be required to provide information as a condition to downloading, installing, or using the App, accessing restricted areas of the Site, and/or using the Service. All information collected about you via the Service is subject to the Privacy Policy, which is incorporated into this Agreement by this

reference. By using the Service, you consent to all actions Home Builder takes with respect to personal information in compliance with the Privacy Policy.

11. **No Reliance.** Any information provided through the Service is made available solely for general information purposes and any reliance you place on it is strictly at your own risk. The Service may include content provided by third parties, including other users or licensors. All statements and/or opinions expressed in the materials accessed through the Service (other than those provided by Home Builder) are solely the opinions and responsibility of the person or entity providing them and do not necessarily reflect the opinion of Home Builder. Home Builder is not responsible or liable to you or any third party for the content or accuracy of any materials provided by third parties. We disclaim all liability and responsibility arising from any reliance placed on such materials by Customer or any other visitor to the Service, or by anyone who may be informed of any of its contents.
12. **Geographic Restrictions.** Home Builder is based in the State of Indiana in the United States. Home Builder provides the Service for use only by persons within the U.S. Home Builder makes no claims that the Service is accessible, legal, or suitable for use outside the U.S.. If you access the Service from outside the U.S., you are responsible for compliance with local laws.
13. **Term and Termination.**
 - (a) Term. The term of this Agreement shall begin when you agree to be bound by it, when you download and install the App, or when you access the Service (whichever occurs first) and remains in effect until terminated in accordance with this *Section 13*.
 - (b) Termination.
 - (i) You may terminate this Agreement to the extent it applies to the App by deleting the App from your device. However, the Agreement will remain in effect with respect to your access and use of the remainder of the Service unless otherwise terminated in accordance with this *Section 13*.
 - (ii) Home Builder may terminate this Agreement with respect to the App or the Service without notice by ceasing to support the App or the Service (respectively), which Home Builder may do in its sole discretion. Home Builder may terminate this Agreement at any time upon notice to Customer at which time an appropriate pro-rated amount will be refunded for any days withstanding on a current subscription payment.
 - (iii) If you violate the restrictions set forth in *Section 3(a)* or *Section 3(b)* or any other terms and conditions of this Agreement, your right to access and use the Service will end immediately.
 - (c) Post-Termination. If Home Builder revokes or terminates the user account provided to Customer or if this Agreement expires or terminates for any reason, all rights

granted under this Agreement will terminate immediately, Customer shall immediately cease all access and use of the Service, shall delete the App from Customer's device and account, and shall return or destroy (at Home Builder's option) any copies of materials Customer has made. Customer acknowledges that termination or expiration of this Agreement does not limit any rights or remedies Home Builder may have at law or in equity.

14. **Representations and Warranties; Disclaimers.**

- (a) Representations and Warranties. Customer represents and warrants that Customer has the legal power and authority to enter into this Agreement without consent from any third party. Customer represents and warrants that Customer has not provided a false identity or any other false information to gain access to the App or the restricted areas of the Site and that all information provided is true, accurate, unaltered, complete, and correct, and will contain no untrue statement or omission of material fact or data. Customer represents and warrants that the information Customer submits or posts to or through the App or the Service belongs to Customer and that neither such information nor granting permission to use it as set forth in this Agreement violates the terms or conditions of this Agreement or any other agreement to which Customer is a party. Customer represents and warrants that none of executing, delivering, entering into, and/or performing Customer obligations under this Agreement will violate any provision of law or any order of any court or any governmental authority to which Customer is subject, or conflict with, result in a breach of, or constitute a default under any contract or agreement by which Customer is bound. Customer represents and warrants that Customer's use of the Service shall comply with all applicable laws, regulations, rules, ordinances, and court orders. Customer shall not enter into any agreement with a third party that is inconsistent with any provision of this Agreement. Customer represents that Customer has duly authorized, executed, and delivered this Agreement. Customer represents, warrants, and covenants that none of Customer's transmissions through the Service will contain any virus, Trojan horse, worm, or other malware or malicious code intended to disrupt or interfere with the ordinary use of the Service.
- (b) Disclaimer. HOME BUILDER MAY DISABLE, SUSPEND, OR REMOVE ANY PART OF THE SERVICE OR THE CONTENT IN THE SERVICE AT ANY TIME IF HOME BUILDER IS REQUIRED TO DO SO BY ONE OF ITS LICENSORS OR SUPPLIERS, IF HOME BUILDER DETERMINES THAT SUCH PORTION OF THE SERVICE OR CONTENT VIOLATES APPLICABLE LAW OR THIRD PARTY RIGHTS, IF CUSTOMER HAS BREACHED CUSTOMER'S OBLIGATIONS UNDER THIS AGREEMENT OR FOR OTHER REASONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HOME BUILDER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SERVICE (INCLUDING MODIFICATIONS) OR INFORMATION PROVIDED UNDER THIS AGREEMENT AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY REGARDING INFORMATION ACCURACY, ANY WARRANTY THAT ACCESS TO THE

SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, ANY WARRANTY REGARDING QUALITY, ACCURACY, TIMELINESS, SUITABILITY, USABILITY, USEFULNESS, COMPLETENESS, SECURITY, AVAILABILITY, OR CONDITION OF THE SERVICE OR INFORMATION, ANY WARRANTY THAT THE SERVICE WILL OPERATE WITH ANY PARTICULAR HARDWARE, SOFTWARE, SYSTEM, OR DATA, AND ANY WARRANTY THAT MIGHT OTHERWISE ARISE OUT OF COURSE OF DEAL, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. CUSTOMER'S USE OF THE SERVICE IS AT CUSTOMER'S OWN RISK. EXCEPT AS EXPRESSLY PROVIDED IN *SECTION 14*, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICE AND RELATED INFORMATION ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. HOME BUILDER SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY A DISTRIBUTED DENIAL OF SERVICE ATTACK, VIRUSES OR OTHER FORMS OF CONTAMINATION OR DESTRUCTIVE FEATURES THAT AFFECT CUSTOMER'S COMPUTER EQUIPMENT, SOFTWARE, DATA, OR OTHER PROPERTY ON ACCOUNT OF CUSTOMER'S ACCESS TO OR USE OF THE SERVICE OR CUSTOMER'S DOWNLOADING OF ANY DOCUMENTS OR OTHER MATERIAL FROM THE SERVICE OR SITES LINKED TO IT, OR FOR CUSTOMER'S RELIANCE ON INFORMATION AND MATERIALS OBTAINED THROUGH THE SERVICE. TO THE EXTENT ANY WARRANTY EXISTS UNDER LAW THAT CANNOT BE DISCLAIMED, HOME BUILDER (NOT APPLE) OR ITS APPLICABLE LICENSOR SHALL BE SOLELY RESPONSIBLE FOR SUCH WARRANTY. APPLE IS NOT RESPONSIBLE FOR ANY CLAIMS RELATED TO THE APP OR YOUR USE OF THE APP, INCLUDING BUT NOT LIMITED TO PRODUCT LIABILITY CLAIMS, ANY CLAIM THAT THE APP FAILS TO CONFORM TO A LEGAL OR REGULATORY REQUIREMENT, OR ANY CLAIM ARISING UNDER CONSUMER PROTECTION, PRIVACY, OR SIMILAR LEGISLATION.

15. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL HOME BUILDER OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUES, BUSINESS OR PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF HOME BUILDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOME BUILDER ASSUMES NO RESPONSIBILITY, AND SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY VIRUSES OR OTHER FORMS OF CONTAMINATION OR DESTRUCTIVE FEATURES THAT MAY AFFECT CUSTOMER'S COMPUTER EQUIPMENT, SOFTWARE, DATA, OR OTHER PROPERTY AS A CONSEQUENCE OF CUSTOMER'S ACCESS TO OR USE OF THE SERVICE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, TO THE FULL EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL HOME BUILDER BE LIABLE TO CUSTOMER FOR ANY DAMAGES IN EXCESS OF THE AMOUNT CUSTOMER PAID TO HOME BUILDER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE CAUSE OF ACTION. THE FOREGOING DOES NOT AFFECT ANY LIABILITY FOR PERSONAL INJURY OR PROPERTY OCCURRING ON HOME BUILDER'S PREMISES, AND OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

16. **Indemnification.** Customer hereby agrees to indemnify, defend, and hold harmless Home Builder from and against all claims, causes of action, deficiencies, liabilities, damages, settlements, fines, penalties, judgments, costs, expenses (including attorneys' fees and reasonable disbursements of counsel), fees, awards, or losses arising out of or related to Customer's use of the Service, Customer's breach of this Agreement, and Customer's use of information obtained through the Service. Home Builder shall not be obligated to indemnify or defend Customer with respect to any third party claim, including any arising out of or relating to the App. To the extent Home Builder is required to provide indemnification under applicable law for any third party claim related to the App, Home Builder, not Apple, shall be solely responsible for the investigation, defense, settlement, and discharge of any claim that the App or Customer's use of it infringes any third party intellectual property right.
17. **Links.** Customer shall not link to the Site in any way that implies any association, endorsement, sponsorship, or approval, that causes the Site or portions of the Service to be displayed on (or appear to be displayed on) any other site (eg, by framing, deep linking, or in-line linking), to any part of the Site other than the homepage, and shall not take action with respect to Service that is inconsistent with this Agreement. Home Builder may withdraw any linking permission without notice and Customer agrees to cooperate in any request from Home Builder to cause unauthorized linking or framing to stop. If the Service contains links to third party sites and resources, such links are provided for convenience only. Home Builder has no control over the contents of the sites and resources accessed via such links and Home Builder takes no responsibility for them or for any loss or damage that may arise from Customer's use of them. You access such links at your own risk and subject to the terms and conditions (and privacy policies) of those sites.
18. **Export Regulation.** The Service, and other technology that Home Builder makes available and derivatives of the foregoing may be subject to export laws and regulations in the U.S. or other jurisdictions. Customer must comply with all U.S. or other export and re-export restrictions that may apply to the Service. Customer shall not, directly or indirectly export, re-export, or release the Service to or make the Service accessible from any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable laws and undertakings prior to exporting, re-exporting, releasing or otherwise using the Service from outside the U.S. Customer represents and warrants that neither Customer nor any of Customer's employees or authorized users are named on any U.S. government denied-party list and that Customer is not located in and shall not permit users to access or use any of the Service or technology in a U.S.-embargoed or –sanctioned country, in violation of any U.S. export law or regulation, or in violation of sanctions consistent with U.S. law imposed by the governments of the country where Customer is using the Service.
19. **U.S. Government Rights.** The Service is commercial computer software, as such term is defined in 48 C.F.R. §2.101. If Customer is a U.S. government agency or contractor therefor, Customer receives only those rights with respect to the Service as are granted to all other end users under license in accordance with 48. C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors or 48 C.F.R. §12.212 with respect to all other U.S. government licensees and their contractors.

20. **General.**

- (a) Notices and Contact. All notices required under this Agreement shall be in writing sent by hand, certified mail return receipt requested, or reputable overnight courier service addressed to the party at the addresses provided during Customer's establishment of an account (for Customer) or at 100 N. Louis J. Koch Blvd., Suite 103, Santa Claus, IN 47579 for Home Builder of this Agreement unless changed by notice pursuant to this section. Informal inquiries regarding the App may be directed to support@homebuildersolution.com or (812) 937 – 6862.
- (b) No Assignment. This Agreement is binding on and benefits the parties and their successors and permitted assigns. Customer shall not assign or delegate any of its rights or obligations under this Agreement. If Customer undergoes a change in control, that shall be deemed an assignment for purposes of this Agreement.
- (c) Amendments and Waivers. None of this Agreement's provisions may be waived except in writing signed by the party charged with waiving its rights. No waivers shall be implied, whether from any custom or course of dealing or any delay or failure in a party's exercise of its rights and remedies hereunder or otherwise. Any waiver granted by a party shall not obligate such party to grant any further, similar, or other waivers.
- (d) Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable by a tribunal of competent jurisdiction, the remaining provisions shall remain in effect and be enforced in the manner that gives maximum effect to the parties' intentions.
- (e) Remedies. Except as otherwise expressly stated in this Agreement, all remedies are cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other. Customer acknowledges that the covenants contained in this Agreement are reasonable and necessary to protect Home Builder's legitimate business interests. A breach or threatened breach of the confidentiality or intellectual property provisions of this Agreement may irreparably harm Home Builder. Accordingly, in the event of an actual or threatened breach of this Agreement, Home Builder shall be entitled to seek injunctive relief, specific performance, or both in addition to all other remedies available to it at law or in equity in such circumstances.
- (f) Force Majeure. Home Builder shall be excused for failure or delay in performance when and to the extent that performance is prevented or delayed by any act of any government authority (whether valid or invalid), act of God, disaster, terrorism, hurricane, tornado, flood, fire, or other similar event beyond Home Builder's reasonable control.
- (g) Relationship. The parties are independent contractors. Nothing in this Agreement shall create any partnership, agency, or other fiduciary relationship between them.

- (h) Governing Law and Venue. This Agreement is governed by the laws of the State of Indiana (without regard to conflicts of laws). The parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts sitting in Spencer County, Indiana for all disputes arising out of this Agreement or the relationship between them. Legal actions must be filed within one year of incident or recognition of dispute or forever barred.
- (i) Survival. Sections 8(a), 8(c), 13, 14(b), 15, 16, and 20, the obligation to protect Confidential Information received during the term of this Agreement in accordance with Section 10, as well as all terms and conditions of this Agreement that by their nature are intended to survive termination of this Agreement shall so survive.
- (j) Third Parties. This Agreement may be enforced only by the parties and their permitted successors and assigns. Notwithstanding the foregoing, Apple, Inc. and its subsidiaries is a third party beneficiary of the EULA to the extent it applies to use of the App downloaded from Apple's app store and upon Customer's acceptance of this Agreement, Apple will have the right to enforce the EULA against Customer as a third party beneficiary of the EULA.
- (k) Precedence. In the event of any conflict between this EULA, the Privacy Policy, and any other document incorporated into this Agreement, the terms of this EULA shall govern. To the extent of any conflict between this Agreement and the end user license agreement imposed by the app store from which the App was downloaded, the terms and conditions of this EULA shall govern.
- (l) Amendments to Agreement. Home Builder may unilaterally, at any time and in its sole discretion, amend, modify, revise, update or otherwise change this EULA, in whole or in part. Customer will have an opportunity to review and affirmatively accept the modified EULA before continuing to use the Service. Home Builder may unilaterally, at any time and in its sole discretion, amend, modify, revise, update or otherwise change the Privacy Policy or other components of this Agreement, in whole or in part without prior notice to Customer. Such modified components of this Agreement shall be effective upon posting and shall govern Customer's use of the Service thereafter. Customer's continued use of the Service after a modified component of this Agreement is posted indicates Customer's acceptance of such modifications. You should check this agreement every time you access the Service so you are aware of any changes since they are binding on you.
- (m) Entire Agreement. This Agreement (including the documents incorporated by reference above) is the entire agreement between the parties, superseding any and all other prior or contemporaneous agreements, promises or representations between them regarding the subject matter of this Agreement. Except as otherwise provided in this Agreement, no modification shall be made to this Agreement unless expressed in writing signed by authorized representatives of both parties.